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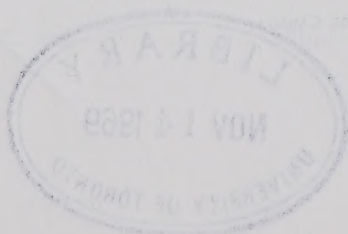
PART II
Study of Canadian pilotage
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CANADA

ROYAL COMMISSION ON PILOTAGE

To His Excellency

THE GOVERNOR GENERAL OF CANADA

May It Please Your Excellency

We, the Commissioners appointed pursuant to Order in Council dated 1st November 1962, P.C. 1962-1575, to inquire into and report upon the problems of marine pilotage in Canada and to make recommendations concerning the matters more specifically set forth in the said Order in Council: Beg to submit the following Report.

/s/ Bernier

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Robert K. Smith

A. J. Zemanick

J. W. Macdonald

SECRETARY

June 1, 1969

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INTRODUCTION

Part I of the Report is a study of the present state of pilotage legislation in Canada and contains the Commission's Recommendations of a general character. Parts II, III, IV and V of the Report are complementary to Part I and should be read in conjunction with it. The plan of the full Report is outlined in the General Introduction, Part I, p. xxv.

Part III reports on the pilotage situation on the East Coast of Canada, excluding the St. Lawrence River, and appraises the requirement for pilotage and the adequacy of the existing organization. The plan of reporting is basically the same as in Part II, i.e., one section for each main Pilotage District. However, it seemed logical to group the small Districts and unorganized pilotage areas geographically. In addition, various remarks, comments and recommendations suggest how needs can be met in consonance with the Commission's General Recommendations.

The reader's attention is drawn to the following subject-matters which are of general importance and to which an appropriate cross-reference should be made in Part I:

- (a) The meaning of the term *Crown employee* with reference to the status of pilot which the Commission recommended in certain cases is studied and defined on pp. 212-213. A cross-reference to this study should be made at the beginning of General Recommendation No. 24, Part I, p. 545.
- (b) The functions and responsibilities of the Pilotage Authority of a merger type District are studied on p. 24 and the terms *potential jurisdiction* and *actual jurisdiction* with reference to the Pilotage Authority of such a merger type District are defined on p. 514 (Sec. Five, Subsec. XIII, Recommendation No. 1). Appropriate cross-references should be made in Part I, pp. 478 and 510.

Shipping casualties and incidents have been grouped according to the method described in Part II, pp. 89 and 90.

Districts vary so greatly in accounting procedure, financial organization and method of keeping statistics that the data contained in their official reports are not readily comparable without due allowance being made for the differences, which is not possible in all cases. This situation is made clear by the studies made of this information in the annual reports of the various Districts covered in this Part. The proposed Central Authority will be required to issue clear instructions on these matters in order to fulfill its rôle (General Recommendation No. 17, Part I, p. 508, items 14 and 15).

This Commission has proposed a comprehensive Pilotage Act containing, *inter alia*, provisions for legislation through District regulations governing the supporting services such as the administrative staff, and the pilot vessel

service, including the definition of duties and functions, the terms and conditions of the employment of administrative staff and pilot vessel crew (vide pp. 290-291 and 626). Appropriate cross-references should be made in Part I, General Recommendation No. 6, p. 470, General Recommendation No. 14, p. 495, General Recommendation No. 18, pp. 513 and 514.

With reference to the Pilotage District of Saint John, N.B., and the search for an alternative deep water site to the port of Saint John (vide p. 68), the most recent information available to the Commission is to the effect that the Mispic Point area is also being considered. This location would not affect the reasoning on pp. 96 and 138.

Part III

STUDY OF CANADIAN PILOTAGE
ATLANTIC PROVINCES

Section One

PILOTAGE DISTRICT OF PRINCE EDWARD ISLAND

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The only legislation that applies to the Pilotage District of Prince Edward Island is contained in the Regulations made by the Governor in Council and the Pilotage Authority under the Canada Shipping Act.

(1) CREATION OF THE DISTRICT (secs. 324-326 C.S.A.)

The present Pilotage District of Prince Edward Island was established by Order in Council P.C. 2417, dated September 30, 1931 (Ex. 1143) which:

- (a) Revoked all previous Orders in Council and By-laws.
- (b) Amalgamated into one District the former five Districts.
- (c) Made the seaward limit of the District a line situated one mile seaward from the coastline of the Island. Therefore, the District waters comprise a one-mile zone adjacent to the entire coastline and all the navigable waters inland from that coastline, i.e.,
 «To include all the coastal waters of the Province of Prince Edward Island and the waters of the Gulf of St. Lawrence and the Northumberland Strait for a distance of one mile seaward from the shores of said province.»
- (d) Made the payment of pilotage dues non-compulsory.
- (e) Directed that the powers of the function of "Pilotage Authority" be entrusted to a local commission.

(2) PILOTAGE AUTHORITY (sec. 325 C.S.A.)

As provided for by the Order in Council creating the District, the powers of the Pilotage Authority are vested in a local commission. The present members of the Commission were appointed by the Governor in Council individually as follows:

Ian K. Leslie,
Chairman, P.C. 1965-1530 dated August 18,
1965 (Ex. 1459(c));

J. R. St. John,
Member, P.C. 1961-68 dated January 19, 1961
(Ex. 1459(a));

F. G. Osborne,
Member, P.C. 1959-134 dated February 5, 1959
(Ex. 1459(b)).

Mr. Leslie replaced Mr. E. K. MacNutt, who was the Pilotage Authority's Chairman when the Commission held its hearings at Charlottetown, in February, 1963. Mr. MacNutt had been appointed by Order in Council P.C. 3905 dated September 19, 1946 (Ex. 1459(c)).

(3) SECRETARY-TREASURER OF PILOTAGE AUTHORITY (sec. 328 C.S.A.)

On April 2, 1959, by P.C. 1959-395(Ex. 1459(d)) the appointment made by the Pilotage Authority of Mr. F. G. Osborne, one of the Commission members, as Secretary and Treasurer was sanctioned by the Governor in Council. No provisions were made for any remuneration. This regulation is supplemented by subsec. 3(3) of the General By-law which provides that the function of Secretary shall be without remuneration.

(4) PAYMENT OF DISTRICT OPERATING EXPENSES (sec. 328 C.S.A.)

There is no by-law, sanctioned by the Governor in Council, authorizing the Pilotage Authority to make payments out of pilotage revenues.

(5) GENERAL BY-LAW

The Prince Edward Island Pilotage District General By-law was confirmed by Order in Council P.C. 1962-852 dated June 12, 1962 (Ex. 2), revoking P.C. 5760, dated November 10, 1949, and has not since been amended.

Its main provisions are:

- (a) The immediate supervision of the pilotage service is the responsibility of the Secretary.
- (b) Pilots:
 - (i) their number is as determined by the Authority;

- (ii) their licences are valid for such periods, and for the whole or such portions of the District, as specified by the Authority;
 - (iii) to obtain a licence a candidate must be a Canadian citizen, resident in Prince Edward Island and at least twenty-one years of age, who has satisfied a local Board of Examiners as to his knowledge of seamanship and practical knowledge of the interpretation of radar, of the pertinent regulations and of the area where he is to pilot;
 - (iv) since the pilots are self-employed, they may absent themselves at will, provided they notify the Harbour Master of the port concerned of any absence exceeding twenty-four hours and the Secretary if their absence is to exceed forty-eight hours.
- (c) Pilotage dues:¹
- (i) dues are computed on the basis of draught and tonnage with special charges for movages and pilot boat service;
 - (ii) dues are payable directly to the pilots for retention. The Secretary does not handle pilotage money. There is no pilotage fund and no pension fund. The cost of providing pilotage service in the District is borne by the pilots.

There is no provision for, *inter alia*:

- (a) apprenticeship;
- (b) Pilots' Committee;
- (c) despatching, other than the general provision of sec. 3 of the By-law which gives the Secretary direction of the pilots and subsec. 17(3) which refers to an assignment list;
- (d) pilot vessels, except for the charge provided for such service in the tariff. Since the pilots are obliged to meet ships at the time requested, they must supply their own transport.

The By-law contains a number of illegal provisions similar to those found in the By-laws of most Districts. These have been studied in Part I of the Report, *inter alia*: discretionary power to limit the number of licences (Part I, p. 255), discrimination against non-residents of the province who are not eligible to become pilots (Part I, pp. 251 and ff.), determination of the duration of licences by administrative decision (Part I, pp. 264 and ff.), preventive suspension (Part I, pp. 343 and ff.) and disciplinary measures (Part I, C.9).

¹ The reference in sec. 5 of the General By-law to sec. 346(e) Canada Shipping Act is meaningless in a District where the payment of pilotage dues is not compulsory.

2. HISTORY OF LEGISLATION

The first pilotage legislation was passed in 1825: "An Act to regulate the Duties and Charges of Pilots within this Island" (2 Geo. IV c. 1). It authorized the Lieutenant-Governor to appoint pilots for any particular harbour; the pilot had to provide his own pilot vessel; coastal vessels were exempted from the payment of pilotage dues.

In 1832, the Charlottetown pilots were required to co-operate in the application of quarantine legislation (11 Vic. c. 12).

In 1837, an Act fixed the limits of Charlottetown Harbour and made payment of pilotage fees compulsory, except for local vessels and those not exceeding 50 tons belonging to the Colonies of British North America. It also imposed a penalty for any breach of duty by a pilot.

In 1848, the exemption for local vessels was reviewed and each pilot was required to own a suitable, safe pilot boat of not less than 16-foot keel (14 Vic. c. 11).

Prince Edward Island joined the Dominion of Canada on July 1, 1873.

In 1877 and 1878, four Pilotage Districts, Summerside, Alberton, Cra-paud and New London, were created under the 1873 Pilotage Act, and the payment of pilotage dues was made compulsory. A fifth District, Richmond Bay, was created in 1898 (vide Part I, App. II, p. 591).

In 1931, three federal members of Parliament wrote a joint letter to the Minister of Marine urging a re-organization of the pilotage service in the island because the existing five Districts were "for all intents and purposes defunct" and there remained no body of Commissioners to look after pilots. They recommended amalgamation into a single District under the authority of a supervisory Commission of three whose duties and powers would be limited to the appointment, dismissal and discipline of pilots. They also recommended that the payment of pilotage dues be not made compulsory and that the rates be arranged by the pilots individually.

As a result, on September 30, 1931, by Order in Council P.C. 2417 (Ex. 1143) the pilotage service was re-organized as it is now, and the five previous Pilotage Districts were abolished. The pilotage organization of Charlottetown—the only one still functioning at the time—was also implicitly abrogated. It would appear that a Pilotage District was not created for Charlottetown under the 1873 Pilotage Act; hence, no abrogation was necessary. Under the survival rule, the pre-Confederation organization would have been retained until the complete re-organization of 1931.

However, despite the recommendation, fixing the tariff remained the responsibility of the Pilotage Authority. Since this is a statutory power, an amendment to the Act would have been necessary to deprive the Authority of such power. The By-law passed in 1949 (Order in Council P.C. 5760, Ex. 2) set different rates for each port. For Charlottetown the dues were \$1 per

foot draught plus $\frac{1}{2}$ cent per net registered ton with a minimum charge of \$25; for Souris and Summerside the charge was a fixed amount—\$20 or \$25 depending on the size of the vessel; for Georgetown the rate was \$25 in all cases; for other ports and for small vessels the rates were to be arranged by agreement. There were also charges for movages but none for pilot vessels.

In 1954 (Order in Council P.C. 1954-756, Ex. 2), the rates for Charlottetown, Summerside, Georgetown and Souris were increased to a flat \$1.50 per foot draught plus one cent per net registered ton and the remaining charges were unchanged.

In 1962 (Order in Council P.C. 1962-852, Ex. 2), the General By-law was rewritten in its present form (p. 5).

The Pilotage Authority was no doubt relatively inactive during the Second World War because the vacancy created by the death by drowning of Captain J. Watson Fyfe, one of the Commissioners, was not filled. However, when Captain William S. Gordon, Commissioner, tendered his resignation in 1946, it was decided to re-organize the Pilotage Authority. Order in Council P.C. 3905 dated September 19, 1946 (Ex. 1459(c)) cancelled the appointment of the remaining member, Captain C. Fitzgerald, and appointed a new Pilotage Authority consisting of three members.

Chapter B

BRIEFS

No briefs were submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

According to the Order in Council which created the District (p. 4), pilotage waters were to comprise all navigable waters inside a line situated one nautical mile seaward from the 652-mile coastline of the Island. In practice, they are limited to the waters of the ports for which a pilot is licensed, and their approaches (vide Part I, p. 47).

(2) PHYSICAL FEATURES

The Pilotage District comprises the whole coast of Prince Edward Island. It is some 120 miles long, averages 20 miles in width and lies in an east-west direction 10 to 20 miles off the mainland north of Nova Scotia and east of New Brunswick with Northumberland Strait in between. The highest point of the Island is 450 feet above sea-level. There are few navigational hazards, and fog is infrequent.

(3) PRINCIPAL HARBOURS AND PILOTAGE AREAS

There are only six ports of sufficient size and importance to commercial shipping to warrant pilotage service.

(a) *Charlottetown*

The capital city of the Province is located on the west bank of the Hillsborough River on the south coast of the Island and about $2\frac{1}{2}$ miles from its entrance in Hillsborough Bay. It exports potatoes, butter, oats, cheese, livestock, petroleum products and imports coal, steel, cement and general merchandise. The population in 1966 was 18,000. The season of navigation extends usually from April to December inclusive, depending on the severity of the winter. It is a Port of Entry. There are several wharves, the principal ones being:

- (i) Railway wharf, west side berthing length 730 feet with depths of 24 feet at its outer end, and east side berthing length 700 feet with 24

feet at its outer end; wharf equipped with railway tracks, water, oil and gasoline pipelines;

- (ii) two Department of Transport wharves, one 300 feet long with a depth of 33 feet alongside, one with a berthing length of 500 feet with a depth of 19 feet alongside;
- (iii) Buntain, Bell & Co. wharf, length 440 feet with a depth of 12 to 21 feet alongside;
- (iv) Texaco Canada Ltd. wharf, 365 feet long with four large oil storage tanks, depth of 28 feet alongside;
- (v) Irving Oil Co. wharf, used exclusively for Irving Oil tankers.

The controlling depth at low water is 32 feet and tides rise from 8 to 9½ feet. The anchorage area provides 7 to 10 fathoms of water.

Canadian National Railways connect with mainland lines by car ferry across Northumberland Strait. Frequent steamship services connect with Newfoundland ports, Magdalen Islands, Nova Scotia and New Brunswick ports. There are no tugboats because they are considered unnecessary for power vessels.

(b) *Summerside*

Is located on Bedeque Bay, south coast of the Island, entrance to which is made from Northumberland Strait. In addition to being a summer resort, Summerside is an important shipping port for the agricultural products of the surrounding district and is a Port of Entry. It exports potatoes, oats, hay, pulpwood and imports fertilizer, coal, molasses. The population in 1966 was 10,000. The average season of navigation is from May 1 to December 5.

There are two wharves:

- (i) Department of Transport wharf, built of concrete and steel piling, with a berthing length of 600 feet on its west side and a depth of 19 feet at low water; on its east side, a berthing length of 600 feet and 19 feet alongside and a further 300 feet with 17 feet at low water. Railway tracks lead on to the wharf;
- (ii) Holman wharf, a timber structure with a berthing length of 300 feet and a depth of 8 feet alongside.

The largest vessel to enter and leave was 405 feet in length. There are no towing facilities.

Controlling depth in approach channel is 22 feet at low water. Spring tides rise 6¾ feet, and neaps 5¾ feet.

(c) *Souris*

On the east side of Colville Bay on the east coast of the Island, is a farming and fishing centre. It exports potatoes, farm products, fish and lumber and imports coal, salt, oil and general merchandise. The population

in 1966 was 1,464. The season of navigation is April 1 to January 10, but may be longer or shorter depending on the severity of the winter. Souris is a convenient harbour of refuge and is protected by a breakwater nearly 1,700 feet long. The entrance channel has a depth of 22 feet at low water. Spring tides rise 5 feet and neap tides 3 feet. Anchorage off the end of the breakwater. No towing facilities.

There are two wharves.

- (i) The Government railway wharf, close inside the breakwater, with a length of 1,000 feet and a width of 140 feet, has a shipping berth of 600 feet with 22 feet of water along its north side and on its south side 600 feet with 18 feet of water. The approach channel, 900 feet long, has a minimum width of 300 feet and is dredged to 22 feet.
- (ii) About 150 feet north of the Government wharf lies the Eastern Packers Ltd. wharf about 500 feet long and 90 feet wide, with a berthing space of 270 feet with at least depth of 13 feet alongside. It provides a good berth for small vessels and is generally used by fishing vessels.

(d) *Georgetown*

Is located on Cardigan Point, Cardigan Bay, east coast of the Island, a few miles north of Montague. It exports potatoes, turnips and farm produce and imports fertilizer. The population in 1968 was 754. The season of navigation is April 15 to January 1. The harbour entrance has a depth of 9 fathoms and the channel approach a depth of 36 feet at low water. The harbour can accommodate vessels of 32 feet draught and 450 feet in length. Spring tides rise $5\frac{3}{4}$ feet and neaps $3\frac{1}{2}$ feet. The harbour basin—about $\frac{3}{4}$ mile each way—provides good anchorage. There are no towing facilities.

There are two wharves:

- (i) Government railway wharf, 810 feet long and 99 feet wide with berthing space on its west and east side of 400 feet with 23 feet alongside and gradually shoaling;
- (ii) Queen's wharf, 295 feet long with a depth of 14 feet alongside.

(e) *Montague*

Is located at the mouth of the Montague River south side of Cardigan Bay. It exports farm produce, pulpwood, caskets and monuments and imports coal and flour. The population in 1968 was 1,522. The season of navigation is May 1 to December 15. The channel depth is 14 feet at low water in the approach channel from Georgetown Harbour. Spring tides rise $5\frac{3}{4}$ feet and neaps $3\frac{1}{2}$ feet.

There is one wharf: the Government wharf, 237 feet long with a depth of 14 feet alongside.

(f) *Alberton Harbour*

Alberton Harbour is situated in the northern part of Cascumpeque Bay at the western end of the Island, facing the Gulf of St. Lawrence. It has good depths and is well sheltered, but its approach is obstructed by an outlying shifting sand bar; it is much used as a harbour of refuge by coasters and fishing vessels. The outer bar, $1\frac{1}{4}$ mile seaward of the entrance, is of sand and has a depth of 10 feet and a very narrow channel. The channel from the outer to inner bar is one cable wide between sandbanks. The inner bar at the entrance to the harbour has also a depth of 10 feet. Since the channel over the bar constantly shifts, no attempt should be made to enter without local knowledge.

The maximum rate of the tidal stream in the entrance of the harbour is usually $1\frac{1}{2}$ knots, but sometimes exceeds 4 knots.

The small town of Alberton is situated at the northern side of the harbour and had a population of 885 in 1961. It is a station on the Canadian National Railway line. The surrounding district is well populated and very fertile.

There are three wharves:

- (i) Queen's wharf, 430 feet long with a T-shaped head 126 feet long with a depth of 8 to 10 feet alongside the head;
- (ii) the railway wharf, 425 feet long with a depth of 5 feet at the outer end;
- (iii) a small Government wharf with a depth of 4 feet alongside.

The harbour freezes over by about January 3 and is clear of ice about April 6.

COMMENTS

With the exception of Alberton Harbour, which has a controlling depth of only 10 feet, there are no unusual hazards attending the navigation of the ports and harbours of Prince Edward Island where pilotage services are performed. Alberton Harbour is used generally by local coastal vessels where Masters have local knowledge of its navigational hazards.

Navigation is comparatively easy and dense fog is seldom experienced. Pilot J. R. MacDonald of Charlottetown recalled only one occasion when fog prevented him from piloting a vessel inwards. Should fog prevail, he would not attempt to pilot a vessel to Charlottetown.

(4) MARITIME TRAFFIC AND PILOTAGE TRAFFIC

The vessels that call at Prince Edward Island ports are generally medium or small in size because large vessels are not required to handle local imports and exports. Progressively there are fewer small ships. These are being

replaced by ships of medium size which generally employ pilots, with the result that the proportion of ships taking pilots has increased more rapidly than the proportionate increase in total ships.

The peak season is the late fall when there are a number of ships, mostly foreign, loading potatoes for export to South America. During spring and summer, the principal traffic consists of tankers which are the largest ships that call at P.E.I. ports. In 1966, the largest was M.V. *Irving Stream*, 10,144 N.R.T., which called at Charlottetown.

The following shipping statistics (Ex. 1483) provided by the Dominion Bureau of Statistics show the number of vessels of 250 N.R.T. and over that arrived at the five principal pilotage areas in each of the years 1962 to 1967, together with the total foreign and coastwise cargo handled. Ports are listed in their order of cargo tonnage handled.

Year	No. of Arrivals	Tonnage (NRT)		Cargo Handled (Tons)		
		Aggregate	Average	Foreign	Coastwise	Total
CHARLOTTETOWN						
1962.....	248	321,689	1297	33,126	437,175	470,301
1963.....	196	271,912	1387	15,912	316,257	332,169
1964.....	212	306,646	1446	37,236	416,608	453,844
1965.....	187	334,354	1788	119,633	367,645	487,278
1966.....	239	416,465	1743	139,763	441,141	580,904
1967.....	218	447,853	2054	172,682	491,337	664,019
SUMMERSIDE						
1962.....	27	54,034	2001	44,342	28,396	72,738
1963.....	25	39,995	1600	33,225	23,726	56,951
1964.....	34	59,236	1742	36,750	20,428	57,178
1965.....	24	46,259	1928	44,942	27,000	71,942
1966.....	29	64,813	2235	38,684	36,616	75,300
1967.....	36	51,110	1420	34,288	33,988	68,276
SOURIS						
1962.....	54	43,853	812	19,600	9,013	28,613
1963.....	63	44,495	706	11,288	7,371	18,659
1964.....	48	36,011	750	14,542	6,009	20,551
1965.....	49	29,773	608	8,987	4,768	13,755
1966.....	116	75,431	650	31,938	8,389	40,327
1967.....	74	57,578	778	28,936	10,037	38,973
GEORGETOWN						
1962.....	9	2,340	260	—	638	638
1963.....	3	4,973	1658	1,305	656	1,961
1964.....	2	3,286	1643	6,136	640	6,776
1965.....	4	6,276	1569	2,097	4,171	6,268
1966.....	10	15,899	1590	10,461	5,354	15,815
1967.....	—	—	—	—	—	—

Year	No. of Arrivals	Tonnage (NRT)		Cargo Handled (Tons)		
		Aggregate	Average	Foreign	Coastwise	Total
MONTAGUE						
1962.....	6	9,827	1638	11,498	4,077	15,575
1963.....	4	5,562	1391	2,661	612	3,273
1964.....	5	7,669	1534	8,435	2,001	10,436
1965.....	4	5,745	1436	6,043	792	6,835
1966.....	5	7,060	1412	6,720	710	7,430
1967.....	—	—	—	—	—	—
TOTAL ALL PORTS FOR 1962 AND 1967						
1962.....	344	431,743	1255*	108,566	479,299	587,865
1967.....	328	556,541	1697*	235,906	535,362	771,268
INCREASE (OR DECREASE)	(16)	124,798	442	127,340	56,063	183,403

SOURCE OF INFORMATION: Exhibit 1483.

* Average (total aggregate tonnage over number of arrivals).

The following table based on information contained in the Pilotage Authority's Annual Reports shows for the period 1956/57 to 1967 inclusive the total number of vessels employing pilots at all ports, their aggregate net tonnage and the average net tonnage per ship piloted. In this summary the yearly number of vessels should be doubled to obtain the number of times pilots were used since each vessel (arrival) normally accounted for two pilotage trips (inward and outward).

Year	Number of Vessels	Net Tonnage	
		Aggregate	Average
1956/57.....	65	137,263	2,111.7
1957/58.....	81	164,171	2,026.8
1958/59.....	52	84,116	1,617.6
1959/60.....	47	98,409	2,093.8
1960.....	73	175,376	2,402.4
1961.....	66	194,171	2,942.0
1962.....	64	177,747	2,777.3
1963.....	71	155,925	2,196.1
1964.....	109	243,470	2,233.7
1965.....	101	267,185	2,645.4
1966.....	149	327,517	2,198.1
1967.....	161	350,681	2,178.1

This table shows that:—

- (a) Maritime traffic in Prince Edward Island is not extensive and consequently there is not a great demand for pilotage services. The number of vessels using pilots increased considerably, relatively speaking, during 1964-1967. However, the increase was confined to Charlottetown.
- (b) Contrary to the general trend, the vessels piloted do not show an increase in size. While the average tonnage of the total number of vessels as well as those using pilots indicate that, as a rule, only the larger ones take pilots, these average figures also indicate that vessels calling at Prince Edward Island ports are comparatively small. For 1966, the average size of vessel piloted in the B.C. District was 5,482 NRT and in Halifax 3,799 NRT compared with 2,198 NRT in Prince Edward Island. This is not the result of lack of proper port facilities or of navigational hazards, but the fact that larger vessels are not required to meet the present commercial demands of the Island.

The busiest port is Charlottetown. In 1963, the average pilotage assignments were two trips a week except during the peak season when the average was four. The workload, however, has more than tripled since. In 1962, the number of vessels piloted was 28. This had increased to 103 in 1966.

The next busiest port is Summerside. Its pilotage traffic has somewhat increased but not to the same extent as Charlottetown. In order of importance follow Georgetown and Montague, which are serviced by the same pilots, and finally Souris. In Alberton, the pilot who was licensed in 1961 has not performed any pilotage since 1962.

2. NATURE OF PILOTAGE SERVICE

(1) DESCRIPTION OF PILOTAGE SERVICES

Coastal pilotage is not performed but a pilotage service is available for the six ports or harbours previously described.

The licence of each pilot is restricted to the waters of the harbour and port he serves. In addition, the Pilotage Authority endeavours to make available one relief pilot with a licence valid for the whole District.

The reasons for this policy are:

- (a) the limited competence of the pilots, which makes it necessary to confine them to the waters with which they are familiar;

- (b) the vessels which require pilotage services in the District are few in number and comparatively small in size with the result that the remuneration available to the pilots is small. Most of the pilotage revenue in Charlottetown is derived from services rendered to tankers.

There is not sufficient traffic at any of the ports (except recently at Charlottetown) to provide full time occupation or an adequate income for even one pilot. The pilots of the District must, therefore, be allowed to do other work as long as they are generally available for pilotage duties. There has never been a complaint that a ship was delayed because a pilot was not available.

As a rule, small vessels do not take a pilot except on their first trip but large tankers always do. Small vessels, which are often owned by the Master and manned by his family, can not afford normal pilotage dues. The charges are then fixed by agreement (although in contravention of the law); otherwise, the pilot would lose this income.

The longest pilotage assignment is at Charlottetown where the pilot may have to go out 11 miles to embark. The normal time one way for such an assignment is three and a half hours, not counting waiting time.

(2) PAYMENT OF PILOTAGE DUES NOT COMPULSORY

Prince Edward Island is the only District in Canada where there is completely voluntary pilotage.

The compulsory payment of dues was abolished at the time of the re-organization in 1931 because three federal Members of Parliament so recommended.

Voluntary pilotage solves the question common to coastal Pilotage Districts whether a ship in transit must pay pilotage dues whenever it enters coastal waters (vide Part I, p. 47).

From the evidence it appears that navigation in the District is safe and that there are very few accidents to ships whether or not they employ a pilot. The Chairman of the Pilotage Authority in 1963 did not feel that the payment of pilotage dues should be made compulsory for safety reasons. He added that the pilots would be in favour of the idea in order to increase their income, but there has been no such request from the shipping interests and he expressed the opinion that there seems to be no reason to change the existing arrangements.

3. ORGANIZATION

(1) PILOTAGE AUTHORITY

The function of Pilotage Authority is exercised by a three-man board, the members of which are all federal employees working in the same building in Charlottetown.

The Pilotage Authority's duties are limited to licensing, rate-fixing, general surveillance and the regulation-making required for the discharge of these duties. None of the Pilotage Authorities that have existed in what is now the Prince Edward Island Pilotage District has ever controlled the provision of its pilotage services. A step was taken in that direction when the new General By-law of 1962 purported to give to the Secretary the "direction of pilots". The factual situation, however, remained as before. The pilots are truly self-employed, independent contractors. Although free enterprise prevails, there are very few occasions for pilots to compete because normally, there is not more than one pilot licensed for any given port and there is no reason for a second pilot except as a relief on the rare occasions when the licensee is not available.

The Pilotage Authority does not collect pilotage dues; there would be no advantage for it to do so because no levy of any kind is made on the pilots' earnings. Therefore, the Pilotage Authority has no financial responsibility and there is no Pilotage Fund to supervise.

The Authority has no daily record of the work done by each pilot and despite sec. 6 of the General By-law, the pilots' source form, does not appear to be in use. In order to file his annual return, the Secretary has to rely on the annual report made by each pilot. He has no system of control over pilotage and has no way of verifying whether any particular ship employed a pilot or whether the correct amount was charged. In fact, he does not need such information except for statistical purposes.

(2) PILOTS' COMMITTEE AND ADVISORY COMMITTEE

There is no Pilots' Committee, Association or Corporation or an Advisory Committee; the pilots work independently in their own locality.

(3) ROLE OF THE DEPARTMENT OF TRANSPORT

Pilotage in Prince Edward Island is considered a matter for local jurisdiction and the Department will not interfere unless its attention is directed to some complaint or problem. There have been no serious maritime accidents and the Department has received no complaints.

(4) RECOMMENDATIONS FOR DISTRICT ORGANIZATION

No recommendations to change the existing organization were received.

At the Commission's hearing in Ottawa, the Department of Transport representative stated that there is no reason to believe that the existing organization of the pilotage service is unsatisfactory or inadequate for the needs of Prince Edward Island.

4. PILOTS

(1) RECRUITING AND QUALIFICATIONS OF PILOTS

Since the pilotage service in Prince Edward Island offers insufficient income to attract skilled candidates, it is difficult to recruit pilots. It has been impossible to attract any one with a marine certificate of competency. Therefore, the Authority is obliged to employ as pilots local mariners with practical experience in the navigation of these waters, mostly fishermen, and the prerequisites have been drawn up accordingly.

There is no system of apprenticeship or training: each pilot must acquire the necessary knowledge through his own efforts. However, since 1967, this practice has been departed from. Although apprenticeship is not foreseen in the By-law, with the approval of the Authority, the Charlottetown pilot has taken an apprentice. It was explained that this was done because of the increasing traffic in Charlottetown Harbour (Ex. 1459(e)).

Despite the By-law requirements (secs. 9 and 10), no Board of Examiners is appointed and there are no formal examinations. The Authority arranges for a practical examination during which the candidate is required to spend some time on board a Department of Transport vessel so that the Master may test the candidate's local knowledge, ability as a ship handler and seamanship. Before the Pilotage Authority issues a licence, it makes its own appraisal of the candidate and studies the Master's report.

Therefore, the pilots in this District are limited in their qualifications, especially their ability to handle ships. After a minor accident about 1957, the Commission made a ruling that when a pilot embarks he must warn the Master of his limited ability to berth and unberth the ship (vide Commission's Remarks and Recommendations, Part I, pp. 251 to 253, General Recommendation 13, pp. 494 and 495, and General Recommendation 12 re licensing of "Pilotage Advisers", pp. 491 to 493).

Pilot J. R. MacDonald of Charlottetown explained that he acquired his experience first by going on board ships for two years with his father, then alone for an additional year with a letter of introduction from the Department of Transport. He never had any difficulty handling vessels, not even berthing, which he does occasionally with the Master's assistance. He does all manoeuvring and berthing, as well as conning, through the Master. Apart from his occupation as pilot, he is "boss stevedore".

He considers that bridge aft ships are more difficult to handle, but only when berthing because it is difficult to judge the distance. When coming alongside, he needs the help of a ship's officer who stands at the bow and informs him the distance from the wharf.

He is satisfied with the amount of money he makes out of pilotage. Up to 1963, the largest ship he had ever brought into Charlottetown was the tanker *Irving Glen* (7,949 NRT) drawing 34 feet. In 1965, he had three ships of over 10,000 NRT. Most of his pilotage is done at night. He never served in a sea-going ship and has no knowledge how to use radar or an echo sounding machine.

Pilot E. R. Clow, one of the two pilots in Georgetown, who also serves Montague and the Cardigan River, had only four assignments in 1962. He works in his own boat for the federal Department of Fisheries as a Fishery Officer. To become a pilot, he applied to the Authority, and passed a practical test in one of the Department of Transport's ships, (*Sir Charles Tupper*), by taking the ship from Panmure Island to the entrance to Georgetown Harbour. The average time required to cover the four or five miles from the point of embarkation to the harbour is half an hour. There is not much current except at the mouth of the Cardigan River. The channel is some 200 feet wide but there is one sharp seventy-degree turn where the channel is marked by range lights. When berthing he gives his orders through the Master to the wheelsman. Since most of his pilotage work is done at night, it does not interfere with his main occupation.

(2) DISCIPLINE

Since 1946, the Pilotage Authority has had to exercise its disciplinary powers on only three occasions.

The licence of a Charlottetown pilot was suspended after two adverse reports, that he had reported for duty while under the influence of liquor (this must have occurred before 1952 because it is not reported in the annual returns available to the Commission). In 1965, a pilot had his licence cancelled for violation of the By-law provision (sec. 17) regarding the use of liquor (Ex. 1459(e)). In 1957, a ship navigated by a pilot collided with a wharf at Summerside. He was told to be more careful.

(3) SHIPPING CASUALTIES AND INQUIRIES

For the period 1957 to 1967, a total of 16 shipping casualties were reported; the three in which a pilot was involved were of a minor character. No preliminary inquiry or other investigation under Part VIII C.S.A. was held.

5. PILOTAGE OPERATIONS

(1) PILOT STATIONS

Pilotage services are available in five ports as follows:

(a) *Charlottetown*

Charlottetown, the main port of the Province, handles the bulk of the maritime traffic. It is served by Pilot John R. MacDonald. In 1958, he took over from his father who, in turn, had been the pilot since 1931.

(b) *Georgetown-Montague*

In 1958, the former pilot, T. Gotell, retired and was replaced by F. J. Gotell. The latter left the Province in 1961 and was succeeded by E. R. Clow, who was joined in the fall of 1962 by a second pilot, J. L. Llewellyn. Mr. Llewellyn has not been listed as a pilot since 1965. There is little traffic.

(c) *Souris*

Souris is served by Pilot J. G. Gillam who was licensed in 1946.

(d) *Summerside*

Summerside is the Province's second port. It was served by Pilot J. W. Gallant from the time he was licensed in 1947 until he died in 1967. He was replaced by Joseph Ira Arsenault.

(e) *Alberton*

There is one pilot—E. L. Hutt—who was appointed in 1961. He piloted three ships that year but has performed no pilotage since.

(f) *Relief Pilot*

For at least seven years prior to 1960 there was a relief pilot, J. A. Lund, domiciled in Charlottetown. He retired in 1960 at the age of 70 and had not yet been replaced when the Commission sat in Charlottetown because the Pilotage Authority had been unable to find a replacement. The only qualified candidate could not accept because of his other employment. It is extremely difficult to find a pilot qualified for the whole District whose main occupation would allow him to undertake occasional pilotage assignments.

On July 11, 1968, the Pilotage Authority informed the Commission that the substantial increase in pilotage work in Charlottetown has provided a solution for the problem. The Pilotage Authority intends to license a second pilot for Charlottetown and to make the senior pilot available elsewhere in the District to act as relief pilot when required (Ex. 1459(e)).

(2) PILOT BOARDING STATIONS

There are no official Pilot Boarding Stations in the District. The pilots come out in a boat to meet incoming vessels and embark at or near the entrance to the port or harbour.

(3) PILOT VESSELS

In this District it is the responsibility of the pilots to provide pilot vessel service.

Prior to the 1962 By-law, there was no pilot boat charge. The 1962 By-law fixed the rates at \$10 for ships not over 200 tons and \$15 for ships over 200 tons. This was, in effect, an increase in pilotage charges because this auxiliary service was previously considered part of the pilots' expenses. In fact, the pilot boat charge was granted as a means of increasing pilots' earnings following a complaint by the pilots that their rates were too low. The Pilotage Authority investigated the practice in other Districts, particularly along the New Brunswick coast, and discussed the matter with the shipping interests.

All the pilots, except one, regularly hire someone to transport them.

Only Pilot MacDonald of Charlottetown uses his own boat—48 feet long, 11 foot beam, powered by two diesels. It is manned and maintained by his brother with whom he divides his pilotage income as he previously did with his father. With the boat he provides a line service which is included in his pilotage charges. When there are no pilotage duties to perform the boat is used for whatever jobs may be available. Pilot MacDonald states that the revenue derived from pilot boat charges barely meet maintenance expenses.

Pilot Clow of Georgetown has his own boat for his work as Fishery Officer of the federal Department of Fisheries but he seldom uses it for pilotage because he has to find someone to operate it. Normally he hires a boat for the set fee of \$15. In 1962, he used his own boat once, hired one twice and needed no boat for two small schooners he piloted.

(4) DESPATCHING

There is no despatching problem since each pilot is responsible for the port where he resides.

All requests for pilotage are made direct to the pilot by shipping agents or are relayed to him by the Harbour Master or by the Pilotage Authority.

No evidence was received about the arrangements made by Pilots Llewellyn and Clow for sharing pilotage in Georgetown-Montague. Since they did not pool their fees and there appeared to be no complaints, it is assumed they had agreed on some procedure.

No details were given to show how the relief pilot is despatched (when one is available), but it is assumed, after referring to the By-law, that this is done by the Authority after the port pilot reports he is not available.

(5) PILOTS' REMUNERATION AND TARIFF

As seen earlier, the pilots in the various ports are self-employed and the extent of their pilotage income is the aggregate amount of the pilotage dues they have personally earned through the services they render. There is no Pilot Fund. The few expenses incurred by the Pilotage Authority in the discharge of its responsibilities have been so far absorbed by the various departments of the Federal Government to which the members individually belong. This practice has permitted the Authority not to levy any contribution on the pilots' earnings and to avoid the disproportionately involved accounting procedure that would be required to ensure the cost is equitably shared among the pilots.

The pilotage dues thus collected by the pilots are their gross earnings in that they have to pay from them all the expenses involved in providing their services, i.e., transportation by land and by water, collecting their dues and making their reports to the Authority. The main expenses are connected with the pilot vessel service. They can not be ascertained exactly for all pilots because some provide their own vessel and others use hired boats.

The table hereunder indicates for the period from 1956/57 to 1967 the total gross earnings of the District and the gross earnings of the pilot or pilots in each separate port.

GROSS EARNINGS

Year	District	Charlotte- town	Georgetown	Summerside	Souris	Alberton
	\$	\$	\$	\$	\$	\$
1956/57....	4,805.11	2,120.89	1,125.96	1,118.26	440.00	—
1957/58....	5,796.32	2,392.00	920.05	1,579.55	904.00	—
1958/59....	3,149.65	844.63	486.15	1,372.94	598.00	—
1959/60....	3,534.30	1,574.36	440.00	977.94	542.00	—
1960.....	6,318.82	3,628.99	570.00	1,266.83	853.00	—
1961.....	6,729.73	4,585.54	nil	1,448.99	448.00	247.20
1962.....	7,768.95	4,242.51	554.64	1,829.80	1,142.00	nil
1963.....	7,469.11	4,433.40	635.84	1,629.87	770.00	nil
1964.....	12,067.84	8,308.14	872.56	2,157.14	730.00	nil
1965.....	13,032.59	9,803.74	910.50	1,489.35	829.00	nil
1966.....	18,270.79	14,088.66	1,326.00	1,777.13	1,079.00	nil
1967.....	19,780.38	15,676.36	1,407.23	2,308.79	388.00	nil

The increased pilotage workload in the last four years is reflected in the District aggregate gross earnings. It is apparent also that the increase occurred mainly in Charlottetown.

Chapter D

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE PRINCE EDWARD ISLAND DISTRICT

RECOMMENDATION No. 1

The Prince Edward Island Pilotage District to Remain a Merger Type District

The limited pilotage operations at any of the Island ports, including Charlottetown, do not warrant the creation of a separate Pilotage District for each or any port.

The need for Government control over the qualifications of those offering their services to pilot is necessary for the protection of vessels unfamiliar with the local waters, but the control system provided under the Canada Shipping Act, i.e., the creation of a District for each port would amount to excessive organization which has proved unworkable in practice. The answer to the problem lies in the merger type of District adopted in 1933 in which the Pilotage Authority's responsibilities are limited to the strict minimum, i.e., licensing, rate-fixing and making the limited number of regulations required for the purpose of discharging the first two responsibilities. The pilots operate as free entrepreneurs without any control being exercised over their activities except to ensure that they live up to the obligations their licence implies.

This system has worked well and is the answer to the limited demand for public control over a group of small scale, distinct pilotage services within the same geographical area.

This merger type of organization should be foreseen in the new legislation as recommended by the Commission (General Recommendation 8, Part I, p. 478) and the details of the District organization should be adapted to that situation.

RECOMMENDATION No. 2

The District Limits to Be Defined from Time to Time as Required by the Central Authority through Pilotage Orders and to Comprise Only the Restricted Waters of the Ports of Prince Edward Island and their Approaches where Pilotage Service Is Available

When the limits of the District are defined, they should reflect the factual situation, i.e., the existence of a number of separate, unconnected

pilotage services under one single Pilotage Authority. Therefore, no attempt should be made to connect the pilotage waters of each service artificially (as is now done) with areas of open water where no pilotage service is ever performed and where there is no need for any. Each port where pilotage service is provided should be treated separately for the purpose of fixing the limits of its pilotage waters. Therefore, the pilotage territory of Prince Edward Island District should comprise only the restricted waters of the six ports where pilotage services are now available, together with their approaches. If a demand for pilotage develops in another port and a person qualified to become a pilot is available, the restricted waters of that port and its approaches should be made pilotage waters through an appropriate Pilotage Order made by the Central Authority on the recommendation of the Pilotage Authority. Conversely, when pilotage service is no longer available in a port, it should be deleted from the pilotage territory through a similar procedure.

The Pilotage Authority's jurisdiction should be confined to a geographical area, the limits of which should be those beyond which the Authority is not in a position to exercise efficient control. In the case of the Authority of the Prince Edward Island District, potential jurisdiction should extend to all the navigable waters of the Island but not to those of N.S. and N.B., and the actual jurisdiction should include only those areas that have been made pilotage waters through Pilotage Orders. As for the remaining Island waters, it will be the responsibility of the Pilotage Authority to appraise their pilotage requirements and assess the possibility of providing pilotage service so that new services can be created where and if warranted.

As recommended, "as far as regulations, licensing and rate-fixing are concerned, ports should be treated as separate service areas" (General Recommendation 8, Part I, p. 478). Therefore, where necessary, the District regulations should contain local legislation applicable to each port to meet its own pilotage requirements.

RECOMMENDATION NO. 3

The Service to Be Classified as a Private Service

According to the criteria enunciated in General Recommendation 17 (Part I, p. 509), the various pilotage services in the Prince Edward Island District should be classified as "private services".

RECOMMENDATION NO. 4

The Pilotage Authority to Be Empowered to Issue Pilotage Adviser's Licences

On account of the non-availability of qualified mariners to become pilots and the limited navigational problems encountered in the restricted waters of the District, the Pilotage Authority should be authorized to issue "Pilotage Adviser's Licences" (vide General Recommendation 12, pp. 492 and 493).

Section Two

PILOTAGE DISTRICT OF SAINT JOHN, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

There are no longer any statutory provisions of exception for the Pilotage District of Saint John, New Brunswick. It is wholly governed by the provisions of the Canada Shipping Act which are generally applicable to the pilotage service and its organization. There are, however, a number of Orders in Council, by-laws and regulations that specifically concern this District.

(1) CREATION OF THE DISTRICT

There is no legislation now in effect which provides a legal basis for the existence of the District. The District of Saint John, N.B., was created by specific statutory provisions which have not been carried in the governing statute since the 1934 C.S.A. came into force; the legislation by delegation, i.e., the order of the Governor in Council which would have been necessary to maintain or to reactivate it, has never been made.

It was established as a federal Pilotage District by statutory provisions contained in the 1873 Pilotage Act (secs. 12-16). It became effective as a federal Pilotage District on June 16, 1874, when the Governor in Council, by Order in Council P.C. 789 (Ex. 1460(c)) as required by secs. 12 and 13 of the 1873 Pilotage Act, fixed the limits of the new District and nominated the Government representatives on the statutory corporation created by the Act to be the District Pilotage Authority, "The St. John Pilot Commissioners".

The following provision purporting to create the District was contained in the 1874 order of the Governor in Council:

"...His Excellency, by and with the advice of the Queen's Privy Council of Canada, has been pleased to order, And it is hereby Ordered, that a Pilotage District be and the same is hereby formed for St. John, in the Province of New Brunswick, the limits of which District shall embrace...".

This part of the Order in Council was null and of null effect because the Governor in Council had no power over its existence since it was created by statute. Parliament had dealt, by specific provisions of the Act, with most

matters that are generally left to the regulation-making power of the Governor in Council. It had provided for the existence of the District, for its name, for the creation of an *ad hoc* corporation to act as its Pilotage Authority and for the compulsory payment of pilotage dues. It had limited the legislative powers of the Governor in Council, the exercise of which it made mandatory, to the fixing of the District limits and to the appointment of two Government representatives on its corporate Pilotage Authority.

These governing statutory provisions were retained in the subsequent statutes up to the 1927 C.S.A. inclusive. However, the 1934 C.S.A. abrogated them all without exception (sec. 717 and Schedule 13, 1934 C.S.A.). The survival-notwithstanding-repeal provision of the 1934 C.S.A. (sec. 718) did not apply to statutory provisions.

The repeal of these statutory provisions resulted in extending to the Saint John District the full extent of the legislative competency which the Governor in Council possessed with regard to Districts he could create. The repeal of the statutory provisions governing the existence of the Saint John District would automatically cause the demise of the District unless its continued existence were provided for by appropriate legislation, i.e., a specific order made by the Governor in Council. However, none was ever made.

It can not be maintained that the Governor in Council reactivated the District when, in 1959, for the first time since 1874, he dealt with the District limits, or when, in 1956, he issued an order appointing the Minister of Transport as the Pilotage Authority for a number of Districts, including the Saint John District.

The creation of a Pilotage District is the imposition of Government control over the free exercise of the pilotage profession in the territory concerned and, therefore, a District can not exist by implication. It must be established not only in clear and unequivocal language but also by strictly adhering to the procedure imposed by the governing legislation. It is obvious from the language employed by the Governor in Council in his orders altering the District limits or appointing the Minister as Pilotage Authority that he acted under the assumption that the District legally existed, but such an assumption on his part can not have the effect of creating a District where none existed. It is merely an error which can have no legal effect.

The consequences of the foregoing finding are that, since August 1, 1936, the Saint John Pilotage District has ceased to exist, that the accessory orders the Governor in Council purported to make were invalid, that there has been no Pilotage Authority nor any valid by-laws, nor is there any pilot now holding a valid licence.

However, in order to pursue the present study, it will be assumed for this purpose only that the District never ceased to exist and that its Pilotage Authority exists in law.

(2) DISTRICT LIMITS

The limits of the District were last defined by the Governor in Council by Order in Council P.C. 1964-19, dated January 10, 1964 (Ex. 1460(dd)), as follows:

"The Pilotage District of Saint John, New Brunswick, comprises the waters of Saint John Harbour from a line joining Green Head and Bear Head on the Saint John River and the waters to seaward bounded by Musquash Point Light bearing 294° True and Cape Spencer Light bearing 057° True".

This Order in Council replaced P.C. 1959-272 of March 5, 1959 (Ex. 1460(ee)), which had made the seaward limit of the District a line joining Split Rock (Musquash Head) and Cape Spencer, i.e., some four nautical miles seaward from Partridge Island. In fact, the new Order in Council has extended the limit seaward to the apex of the two bearings, i.e., some eight nautical miles seaward from Partridge Island.

The 1959 Order in Council had revoked the original limits of the District as established in 1874 (P.C. 789) as amended by P.C. 182 of March 1, 1875, which had defined the limits of the District as the Harbours of Saint John and Musquash with their approaches extending to a line joining Mount Desert Island (Frenchman's Bay, Maine, U.S.A.) and the southwest tip of Nova Scotia at Cape Sable, Seal Islands (Exs. 1460(c) and (d)), both points approximately 130 miles from Saint John Harbour.

(3) PILOTAGE AUTHORITY

The Minister of Transport is the Pilotage Authority. The last appointment to this office was effected by a regulation emanating from the Governor in Council on August 15, 1956, Order in Council P.C. 1956-1264 (Ex. 1143).

(4) COMPULSORY PAYMENT OF PILOTAGE DUES

There is no legal foundation at the present time for enforcing the compulsory payment system in the Saint John District.

From the first Pilotage Act in 1873 to the present legislation contained in Part VI of the Canada Shipping Act, the imposition of the compulsory payment of dues has been, with certain exceptions, within the competence of the Governor in Council. From 1873 to 1934, the Act excepted from this competence the four Districts of Quebec, Montreal, Halifax and Saint John by a specific enactment that in those four Districts the payment of dues was compulsory. This exception was not retained in the 1934 C.S.A., with the result that this matter was placed within the competence of the Governor in Council in so far as the Districts of Saint John and Halifax were concerned because, from that time on, these Districts could be created and abrogated by the Governor in Council (sec. 57, 1873 Pilotage Act; sec. 58,

1886 Pilotage Act; sec. 475, 1906 C.S.A.; sec. 455, 1927 C.S.A.; sec. 337, 1934 C.S.A.; sec. 345, 1952 C.S.A.). Since the 1934 C.S.A. came into effect, the Governor General in Council has not made any order on the subject.

The 1874 Governor in Council Order (P.C. 789, Ex. 1460(c)) contained a provision to that effect which reads as follows:

“His Excellency has also been further pleased to order that the payment of Pilotage dues be made compulsory within the limits of the District above defined”.

This part of the order of the Governor in Council was of null legal effect as if it had never been made because, as far as the Saint John District was concerned, this matter was beyond his competence. The fact that some sixty years later he was given this power can not have covered this nullity—a new order was necessary.

Sec. 6 of the District General By-law stipulates that the payment of dues shall be compulsory in the Saint John District. This By-law provision is *ultra vires* because the subject-matter does not come under the delegated regulation-making power of the Pilotage Authority which enacted the provision. The fact that on account of a procedural requirement the Governor in Council confirmed this provision with the rest of the General By-law does not make it an order of the Governor in Council.

The compulsory payment of dues could not have survived after the abrogation of the 1927 Canada Shipping Act because it was an obligation and an infringement of freedom that was imposed by a repealed statutory provision. According to the rules of interpretation, it must be inferred that the intention of the legislature was that in the four Districts concerned the payment of dues should no longer be imposed by statute and that the question whether payment should be reinstated in the Districts of Halifax and Saint John should be considered and decided by the Governor General in Council. A positive order was necessary to reinstate the compulsory system. Since none was made, the result is that since the coming into force of the 1934 C.S.A. the compulsory payment of dues does not apply in the District of Saint John.

(5) ORDERS IN COUNCIL NOT PASSED UNDER CANADA SHIPPING ACT AND AFFECTING THE ORGANIZATION OF THE PILOTAGE DISTRICT

By Order in Council P.C. 1959-19/1093, dated August 27, 1959 (Ex. 52), the Department of Transport was granted authority with respect to, *inter alia*, the Saint John District, to assume the cost of pilot stations and pilot vessel services whether owned or hired.

It is under this authority that the Department of Transport absorbs all the operating costs of the District and the operational deficit of the auxiliary services.

(6) PILOTAGE AUTHORITY'S ENACTMENTS
CONFIRMED BY GOVERNOR IN COUNCIL

(a) *Delegations of Power under Subsec. 327(2) C.S.A.*

There is no by-law passed by the Minister as Pilotage Authority quoting subsec. 327(2) as authority but powers are delegated in the General By-law enacted under sec. 329 through which, on account of subsec. (p), the same purpose may be achieved (vide Part 1, pp. 289 and ff.);

(b) *Appointment of a Secretary-Treasurer and Authorization for Payment of District Expenses*

There is no order by the Governor in Council now in force which authorizes the Pilotage Authority of Saint John to pay any of the operating expenses of the District out of pilotage revenue and there is no need for any since all these expenses are now assumed, as stated above, by the Department of Transport. The function of Secretary and Treasurer is discharged by the Supervisor of Pilots who is appointed in the By-law as the local representative of the Pilotage Authority. Such an appointment is a permissible delegation of powers under subsec. 327(2) or subsec. 329(p) C.S.A. In either case, authority under sec. 328 is necessary only if his salary is to be paid out of pilotage revenue, but this is not the case here.

(c) *Exemptions for Small Ships (subsec. 346(c) C.S.A.) and Withdrawal of Exemptions (sec. 347 C.S.A.)*

The only regulation made by the Pilotage Authority concerning exemptions is contained in subsec. 6(2) of the General By-law which exempts pleasure yachts not over 250 net registered tons. The fact that the proper authority is not quoted does not, however, make the provision invalid (Part I, p. 248).

(d) *1961 General By-law*

All the by-laws and regulations enacted by the Pilotage Authority that are still in effect are contained in a General By-law confirmed by Order in Council P.C. 1961-1739, dated November 30, 1961 and its two amendments as of August, 1968: Order in Council P.C. 1965-1267 of July 9, 1965, and Order in Council P.C. 1966-2092 of November 3, 1966 (Ex. 17). It replaced the 1957 General By-law as amended (Order in Council P.C. 1957-874, Ex. 1460(bb)).

Its main features are the following (the cross reference to Part I of the Report at the end of a paragraph indicates where the validity of the matter is dealt with in Part I):

- (i) The provision of pilotage services is made the responsibility of the Pilotage Authority which exercises full control through the Supervisor of Pilots, its local representative (Part I, C. 4, pp. 73 and ff.).

- (ii) The pilots' status is that of *de facto* employees who perform pilotage only when and as directed by the Supervisor. They are not entitled to retain the dues earned by their services but all earnings, including the statutory indemnities of secs. 359 and 360 C.S.A., are pooled and the pilots are paid a salary in the form of a share of the pool based on their availability for duty. They are granted leave of absence with pay, half pay and without pay (Part I, C. 4, and C. 8, p. 249).
- (iii) Apprenticeship is abolished. The main prerequisites for applicants are to be between 25 and 45 years of age, to hold a certificate of competency as Master of a home-trade steamship unlimited as to tonnage, and to have had practical experience in the District by having served at least two years as Master or deck officer of a vessel trading regularly into the District. In addition to possessing physical and moral fitness, the candidate must pass successfully an examination which includes local knowledge. There is no examination as to his skill—this is assessed during one year of probation after he is licensed (re legality of probation, vide Part I, pp. 268-269).
- (iv) The dues for pilotage voyages are based on draught only at \$4 per foot. Different movage rates are provided depending on the location where they take place and the rates take the form of a scale based on tonnage. The By-law provides rates for various items and in 1966 (P.C. 1966-2092) a 7½ per cent surcharge was imposed on all pilotage dues.
- (v) A Pension Fund is operated by the Authority. The compulsory contribution is 8 per cent of gross earnings, unless another amount is fixed by the Authority after consultation with the Pilots' Committee. The By-law lists the benefits. For retired pilots these are \$80 per year of service prior to April, 1957, \$615 for service between March 31, 1957 and December 31, 1960, and thereafter the pension credited to each pilot is determined by the amount purchased by his contributions during that period (Part I, C. 10).

2. HISTORY OF LEGISLATION

PREAMBLE

The first part of this historical study covers all the pilotage legislation passed in New Brunswick up to the federal Pilotage Act of 1873. This date was selected to avoid repetition later when the small Pilotage Districts in New Brunswick are studied and also because the legislation itself does not make clear what did or did not apply to Saint John (a question that need not be established definitively for the purpose of this inquiry).

(1) 1784-1867

Pilotage in Saint John and the other ports of what is now the Province of New Brunswick developed with settlement. There, as elsewhere in early colonial days, the principal means of transportation was by water and local knowledge was a prerequisite, particularly in the Bay of Fundy area.

One of the pressing tasks of Col. Thomas Carleton, the first Governor of the Province of New Brunswick when it was detached from the colony of Nova Scotia in 1784, was to improve the safety of navigation and regulate pilotage.

The royal charter granted to the City of Saint John on May 18, 1785, (confirmed by the New Brunswick legislature in 1786, 26 George III c. 46) gave the city jurisdiction over the harbour of Saint John through a harbour authority called a common council composed of the Mayor and other officials of the city who were to “. . . be conservators of the water of the river, harbour and bay of the said city, and shall have sole power of amending and improving the said river, bay and harbour, for the more convenient, safe and easy navigating, anchoring, riding and fastening the shipping resorting to the said city and for the better regulating and ordering the same; . . .” (for extracts from the charter vide appendices to Smith Report, Ex. 1324 pp. 317-324).

The charter, as it read in 1785, contained no specific mention of pilotage but it would appear that the various powers granted in it to the city authorities included the power to license pilots, to fix pilotage rates and to make the regulations required to ensure an efficient, adequate service which would *ipso facto* enhance safety and ease of navigation. This right of the city of Saint John was officially recognized in subsequent legislation and such powers were, in effect, exercised by the common council (Ex. 1460(ff)).

The pilotage legislation applicable to the harbour of Saint John at that time consisted of the city charter, the regulations made thereunder and general pilotage legislation to the extent it did not conflict with the rights and powers granted by the charter and the regulations legally made under its authority.

The following year, Governor Carleton issued an ordinance entitled “An Act for regulating Pilots” (26 George III c. 52, Ex. 1460(a)). The preamble of the Act sums up the situation that was to be corrected “. . . as many accidents have happened and much damage been sustained through the ignorance or neglect of pilots from other ports, and not living in this province”.

Pilotage was organized on the basis of the electoral divisions of the province, i.e., one distinct and independent pilotage organization per county, the Pilotage Authority being the Justices of the Common Pleas in each county together with three or more wardens per port appointed by them. These wardens were to establish the number of pilots required in each port

and examine the candidates. The licensing function was discharged by the Justices of the Common Pleas acting upon the recommendation of the wardens. The Justices acting together with the wardens were given powers to make the necessary regulations and to fix the pilotage rates on the basis of draught. The payment of dues was made compulsory provided a pilot could prove he had offered his services. Ships belonging to the port, coasters and all ships drawing less than six feet of water were exempt.

The Act recognized the right and power of the common council of the city of Saint John to license pilots for the port of Saint John by providing that nothing in the said Act was to "be construed to extend to abridge, diminish or interfere with the powers given to the common council of the city of Saint John, in and by the charter of the said city". On the other hand, it provided that the provisions of the Act would apply to the Saint John pilots by providing "that the pilots which shall be appointed by the said common council shall be entitled to the same fees, perquisites and privileges, that any pilots appointed by virtue of this Act are entitled to".

The 1786 Act was first amended in 1788 to remedy the non-applicability of the Act in the County of Northumberland due to the fact that this county was not provided with Justices of the Common Pleas (50 George III, An Act to continue and amend an Act intituled "An Act for regulating Pilots"). The Act was further amended in 1817 to authorize the Justices to cancel the licence of a pilot reported to them by the wardens and who was proven guilty of improper conduct (57 George III, An Act in addition to an amendment of an Act intituled "An Act for regulating Pilots").

Under the impact of the increased trade of the province, the pilotage legislation was found to be inadequate and in 1821 a new Act was passed entitled "An Act to make more effectual regulations relating to Pilots within this Province" (2 George IV c. 6) (Ex. 1460(b)) revoking the 1786 Act and its two amendments. The new Act maintained the same basic organization but the higher authority became the Justices of the Inferior Courts of Common Pleas in each county. It restricted the profession of pilot to residents of the province. The main features were the official recognition of apprenticeship, piloting by apprentices, and making solvency a prerequisite to piloting. Every pilot owning a pilot boat of not less than eight tons burden was entitled to have three apprentices. After three years of apprenticeship, an apprentice (who was indentured for five years) was entitled to pilot any ship at the request and for the benefit of his master and could not be superseded when so doing by any branch pilot, provided he was then at least 18 years of age, had been found qualified by the Port Wardens and his master had met the solvency requirements on his behalf. The Act also innovated by requiring a pilot to establish his solvency. Before receiving his licence, a pilot was to "enter into recognizance to His Majesty, before one or more of the said Justices, in the sum of one hundred pounds, with two sufficient sureties in

the sum of fifty pounds each, well and faithfully to discharge the duties of his office as Branch Pilot, in such County, and to obey all such regulations as shall be made as aforesaid, under and by virtue of this Act". The Justices, together with the wardens, were given powers to make regulations "for the better government of the said Pilots", that is, concerning the manner in which the pilots should govern themselves in the exercise of their free profession. The term "government" in the same meaning is still found in sec. 329 C.S.A. (vide Part I, p. 273).

The Act made a further distinction between penal jurisdiction and re-appraisal jurisdiction. While the penalties for any breach of regulation were to be recovered before two Justices of the Peace who had no power whatsoever over the licence of offending pilots, the Pilotage Authority, i.e., the Justices of the Inferior Courts of Common Pleas acting in their pilotage capacity, independently of any penal action, had the power, upon a complaint being laid and proof made under oath, to convict a pilot of refusal, neglect or other improper conduct and, as a result of such conviction, to suspend or cancel his licence. However, they had no power to impose either pecuniary punishment or imprisonment.

Furthermore, with regard to the pilots of Saint John, the Act contained a proviso to the effect that nothing contained therein was to interfere with the regulations governing pilots in the city of Saint John. It would appear, however, although the subject is not covered in the Act, that these pilots would continue to benefit from the various advantages granted to pilots.

In 1836, "An Act to explain, amend and in addition to an Act, intituled: "An Act to make more effectual regulations relating to Pilots within this province" was enacted (6 William IV c. 20). This Act confirmed the right of the Justices of the Inferior Court of Common Pleas to suspend or cancel the licence of a pilot in the circumstances mentioned in the Act of 1821 and made it an offence to be tried before two Justices of the Peace for a pilot to act as such while so deprived of his licence, under pain of a fine not exceeding ten pounds (Ex. 1324, p. 326).

In 1837-38, the 1821 Statute was amended to provide for some specific legislation regarding pilotage in the County of Charlotte (1 Victoria c. 29). The pilotage legislation regarding the County of Charlotte was to be revised in 1863 (26 Victoria c. 26) and in 1872 by a federal Act of Parliament (35 Victoria c. 43). This special legislation was abrogated by the 1873 federal Pilotage Act following which the pilotage organization in the Charlotte County was established as a Pilotage District by Order in Council passed on April 2, 1874. It was abrogated on February 25, 1960, after being dormant and inoperative for many years.

The 1821 Act was further amended in 1844 (7 Victoria c. 39) to provide for the removal of port wardens and to clarify the procedure of appointment of pilots (Ex. 1324, p. 327).

In 1854, general pilotage legislation was incorporated in the revised statute where it became volume I, title VIII, chapter 64, section 1, subsection 14, entitled "For the Government of Pilots and for Fixing the Rates of Pilotage". The main change was that pilotage jurisdiction was transferred to the County Court of General or Quarter Sessions of the Peace.

In 1861, 24 Victoria c. 16 provided for the relief of any pilot carried away against his will by fixing his remuneration at two dollars per day plus cost of living and passage back home (Ex. 1324, p. 327).

During that time, the charter of the city was amended once on the subject of pilotage. In 1840, the powers of the Corporation of the city of Saint John over pilotage were increased. The Act entitled "An Act to extend the jurisdiction of the Corporation of the City of Saint John, for the regulation of the rates of Pilotage beyond the limits now prescribed by charter" (3 Victoria c. 70) provided that the common council formed under the city charter would have the power "to make laws and ordinances for the regulation of branch pilots of the port of Saint John in respect to rates of pilotage to be taken by them as distance money, extending to such parts of the Bay of Fundy in connection with the Harbour of Saint John as they shall deem expedient, . . .". This Act was to be in force for only three years but in 1862, by 25 Victoria c. 7 it was revived and made perpetual.

Because the charter does not contain actual pilotage legislation but merely empowers the municipal authorities to make the necessary legislation by regulations, that part of the city by-laws dealing with pilotage is, therefore, the equivalent of provincial legislation for Saint John Harbour. It is very similar to the provincial legislation, but also contains special provisions to meet local requirements as appears in the 1850 Pilotage By-law of the city of Saint John (Ex. 1324, pp. 319-323) whose main features were as follows:

- (a) The main prerequisites to become a pilot were a five year uninterrupted apprenticeship followed by two foreign voyages to Europe in a square-rigged vessel, to be and remain a resident of the city, to have successfully passed an examination as to competency before a pilotage Board of Examiners and to be "the owner of a good and sufficient boat". There was no solvency requirement.
- (b) The payment of dues was compulsory for voyages inward and outward (but not movages) provided the ship was spoken to before reaching Partridge Island; ships belonging to the port were exempted; the same applied to outward voyages provided service was offered after the ship had obtained its clearance from the Customs and before being under weigh.
- (c) For tariff purposes, the approaches to the port were divided into five large sectors called "first distance, second distance etc."
- (d) Coasting vessels, unless square-rigged, steamboats and vessels drawing under six feet of water were also exempted.

- (e) During his first year, a pilot was limited to ships drawing less than 12 feet of water.
- (f) To encourage pilots to own larger boats, those having a boat of not less than 15 tons were allowed to have two apprentices who could pilot for their master ships drawing eight feet after three years of apprenticeship, and ten feet after four years, provided the apprentice had successfully passed an examination on competency.

(2) 1867-1968

When the Province of New Brunswick joined Confederation in 1867, jurisdiction over pilotage passed to the Federal Government. The first Pilotage Act, which was passed in 1873, abrogated all provincial legislation in this matter, i.e., that part of the New Brunswick revised statutes dealing with pilotage and also that part of the Saint John city charter as amended that gave the city of Saint John powers and jurisdiction in pilotage matters in and beyond the port of Saint John. It also abrogated the federal Act of Parliament that had been passed the year before regarding pilotage in the County of Charlotte.

(3) ST. JOHN PILOT COMMISSIONERS (1873-1918)

In the 1873 Pilotage Act, pilotage in the port of Saint John was dealt with as a case of exception together with Halifax, Quebec and Montreal. The provisions of general application of the Act applied to the pilotage organization of Saint John except when otherwise provided. These specific provisions were gradually withdrawn and the last remnants were abrogated by the 1934 C.S.A.

- (a) The Pilotage District of Saint John became a statutory district, i.e., it was created by the Act itself and, therefore, could not be abrogated except by an Act of Parliament. However, the Governor in Council was made responsible for fixing its limits and the District could not become effective until this was done.
- (b) Pilotage jurisdiction was withdrawn from the city of Saint John and entrusted to an *ad hoc* Corporation created by the Act for that purpose and composed of representatives of local interests and government appointees called "The St. John Pilot Commissioners" (secs. 12 to 15). The Corporation was composed of seven members, two to be appointed by the municipal authorities, two by the Saint John Board of Trade and three by the Governor in Council. The city and the Board of Trade had to elect their representatives within 14 days after the coming into effect of the Act, i.e., before January 15, 1874; the Federal Government had to make its three

appointments before January 31, 1874. The same organization was given to the Halifax District. The municipal authorities of the city of Saint John and the Board of Trade appointed their representatives in the prescribed time (as did the city of Halifax and the Board of Trade of Halifax) but the Government failed to appoint its representatives in time, and, therefore, on account of the provision of the Act which left no alternative, this failure could not be remedied except by an amendment to the Act. This was the reason for the first amendment to the Pilotage Act which occurred in 1874 (37 Victoria c. 26) to delete the time limit for the Government to appoint its representatives. The amendment was assented to May 26, 1874, and on June 16, 1874, the Government, in the same Order in Council, P.C. 789, which fixed the limits of the new District (Ex. 1460(c)), made the necessary appointments, thereby rendering the new pilotage organization operative. These provisions of the Act were further amended in 1882 (45 Victoria c. 32, sec. 1) to cause the post of any member to become automatically vacant after an uninterrupted twelve-month absence of its incumbent. The Corporation of "The St. John Pilot Commissioners" became dormant and inoperative when it was superseded in 1918 by the Minister of Marine and Fisheries as Pilotage Authority (Order in Council P.C. 3135 dated December 21, 1918) (Ex. 1460(u)) a move which had been made possible by a 1904 amendment to the Act (4 Edward VII c. 29, sec. 1). However, despite the factual situation, the statutory provisions dealing with the Corporation were reproduced in the 1927 Revised Statutes. They were abrogated when not reproduced in the 1934 Canada Shipping Act.

- (c) The Act (sec. 16) provided for the appointment of a Secretary and Treasurer who was to be paid an annual salary of not more than \$800 payable out of the Consolidated Revenue Fund of Canada. There was also a similar provision for the District of Halifax (sec. 11). It was soon realized that this was a dangerous precedent and these provisions were abrogated in 1875 (38 Victoria c. 28, sec. 3) and replaced by what is now sec. 328 C.S.A. giving the Pilotage Authority of each District (except Quebec) the right to appoint a Secretary and Treasurer and to pay his salary and other District operating expenses out of pilotage revenues, provided such expenditures are authorized by the Governor in Council (vide Part I, pp. 110 and ff.).
- (d) The Saint John District Pilotage Authority (also Quebec, Montreal and Halifax) was deprived of the power to grant pilotage certificates to Masters and mates (subsec. 18(4)). The 1934 C.S.A. dropped

this restriction thereby granting the Saint John Pilotage Authority the right to issue pilotage certificates, provided it made the necessary regulation, a right which it never used.

- (e) The Act made the payment of dues compulsory in the Saint John District (as well as in Quebec, Montreal and Halifax) (sec. 57). (For the subsequent history of the provision vide pp. 28 and 29.)
- (f) At first, the 1873 Pilotage Act contained no relative statutory exemption (Part I, p. 222) except in the case of the Saint John District. With regard to the provision dealing with "ships registered in the Dominion of Canada" (subsec. 57(5)) which were exempted only if of not more than 250 tons registered tonnage, the Saint John Pilotage Authority was the only one authorized to modify this statutory exemption by regulation. However, in 1875 (38 Victoria c. 28) subsec. 5 was deleted together with the proviso regarding the Saint John District and instead all Pilotage Authorities were empowered to exempt, by regulation, ships of any nationality over the 80 N.R.T. absolute statutory exemption up to a maximum of 125 N.R.T. In addition, in 1922 (12-13 George V sec. 2) the Saint John Pilotage Authority was authorized to vary the statutory unlimited exemption to steamships engaged in coastal trade, a power which was extended to all Districts except Montreal in the 1934 C.S.A.

As stated above, the Governor in Council's P.C. 789 dated June 16, 1874 (Ex. 1460(c)) contained all that was required to make the District operative.

- (a) It purported to create the District. This part of the P.C. was never repealed nor was the creation of the District ever treated thereafter in any other Order in Council. This raises the question whether the Saint John District legally exists since the coming into effect of the 1934 C.S.A. (vide p. 28).
- (b) It fixed the District limits some 130 miles seawards as follows:

"The limits of which district shall embrace the Harbour of Saint John and shall extend to a bound ranging with Mount Desert and Cape Sable Seal Islands, bearing northwest and southeast".

This part of the Order was first amended the following year to extend the limits to include the Harbour of Musquash (Order in Council P.C. 182 dated March 1, 1875 (Ex. 1460(d))). It was to be further amended twice in 1959 and in 1964. The provision of the 1920 By-law, reproduced in the 1934 By-law, which purported to alter the District limits was illegal, being beyond the regulation-making power of the Pilotage Authority.

- (c) It completed and approved the membership of the corporate Pilotage Authority by confirming the appointment of the four members designated by the city of Saint John and by the Board of Trade of Saint John and by naming the three Government appointees. This part of the Order in Council was modified from time to time as it became necessary to fill vacancies until the Corporation became *functus officio* when it was replaced in 1918 by the Minister of Marine and Fisheries as Pilotage Authority (Order in Council P.C. 3135 dated December 21, 1918, Ex. 1460(u)).
- (d) It appointed the Secretary and Treasurer of the Corporation and fixed his salary at \$800 per annum to be paid out of federal funds. This part of the Order in Council became inoperative when the Act was amended in 1875 to make the appointment and remuneration of Secretary and Treasurer a District responsibility (38 Victoria c. 28).
- (e) It also purported to make the payment of dues compulsory, a matter which was already covered in the Act and over which the Governor in Council had no jurisdiction. This part of the Order in Council was therefore null and of null effect (vide p. 28).

The pilotage Authority's regulations may be divided into two periods:

- (a) the regulations of the St. John Pilot Commissioners from 1875 to 1920, the period of the free enterprise system;
- (b) the regulations of the Minister as Pilotage Authority from 1920 to date, the period of fully controlled pilotage.

The new Pilotage Authority immediately prepared District By-laws which were approved by Order in Council 1333 on November 4, 1875 (Ex. 1460(e)). This set of By-laws was to remain in force until abrogated in 1920 by a new General By-law made by the new Pilotage Authority. However, it was amended many times in the interval. These regulations retained most of the provisions of local character in the superseded city of Saint John regulations. The main features of the pilotage organization provided in these regulations are as follows:

- (a) The principle of free enterprise was retained but it was limited to partnerships of pilots through the co-ownership of pilot vessels which became the basis of the pilotage organization. These partnerships were provided for in the Act where they were called (as they still are, subsec. 329(c) C.S.A.) "companies for the support of pilot vessels" (vide Part I, p. 287). The By-law provided that as a prerequisite to piloting a pilot must be the co-owner of not less than four tons of a duly licensed pilot vessel of not less than thirty registered tons, i.e., the type of pilot vessel considered necessary to

provide adequate pilotage service in the extensive approaches to the Harbour of Saint John under the prevailing conditions. Since the cost involved was beyond the financial means of any individual pilot, the company system was the only adequate solution short of fully controlled pilotage. These pilot vessels were required to cruise through the pilotage approaches to the harbour vying for pilotage *clientèle*, the first pilot vessel to approach an incoming ship being entitled to place a pilot on board. One of these pilot vessels was the schooner *David Lynch*. The Register Book shows that the vessel was registered at Saint John April 12, 1894, in the name of five branch pilots who were listed as joint owners. During the next ten years there were forty transactions affecting ownership and between 1904 and 1920 seventy-five more transactions transferring shares or arranging mortgages. On June 4, 1920, when the Minister of Marine as Pilotage Authority acquired title to the schooner, the vessel was owned by three pilots.

- (b) Ships inward bound had to be boarded from one of such licensed pilot vessels except on special occasions at the request of the Master or owner of the ship and with a specific written permission from the Secretary of the Pilotage Authority to board in another way. This document had to be carried by the pilot and turned over to the Pilotage Authority for filing upon completion of the pilotage task.
- (c) On board the pilot vessel, pilotage tasks for ships inward bound were shared according to a tour de rôle system, the first in turn being obliged to take the first ship spoken to unless he exchanged turn with another pilot.
- (d) The dues earned by the members of the company were not pooled, each pilot being entitled to what he had personally earned less a deduction of $2\frac{1}{2}$ per cent retained by the Authority for the Pilot Fund.
- (e) The By-law did not make any other mention of the Pilot Fund except to say that it was to be expended as provided in the Act. It was a true Pilot Fund (vide Part I, C. 10).
- (f) To become a pilot, the applicant had to be a resident of the city or the county of Saint John, to have made two return voyages to Europe as a seaman, to have served an apprenticeship on board a licensed pilot vessel for at least five years and to have passed successfully an examination on his skill and knowledge before a Board of Examiners appointed by the Pilotage Authority. Apprentices could no longer be used as pilots. Licences were permanent.
- (g) Pilot vessels were to be licensed from year to year and the licensing prerequisites were laid down in the By-law: seaworthiness, carrying

the number of boats needed for the conveyance of pilots from pilot vessels to ships and also for safety purposes, carrying other necessary life-saving equipment, and appointment by the pilots from their number of a Master for the vessel. The licence was withdrawn when the vessel no longer met the requirements, thus bringing the whole operation to a standstill until the situation was corrected.

- (h) For the purpose of fixing the rates the division of approaches to the harbour into five “distances”, now called “districts”, was retained. The farther out boarding took place, the higher the rates. The first district extended to a line from Partridge Island to Musquash, while the fifth district extended to a line running from Mount Desert to Cape Sable Seal Islands, i.e., the outside limit of the Pilotage District.
- (i) The voyage rate was based, as it had always been, on draught. It varied from \$1 per foot of draught in the first district to \$2.25 in the fifth district for the inward voyage. There was only one rate of \$1 per foot draught for the outward voyage from the Harbour to beyond Partridge Island. The By-law provided a rate for pilotage down the Bay of Fundy at \$2 per foot over and above the \$1 harbour pilotage outward.
- (j) The By-law also provided rates for movages, later to be referred to in the By-law as “rates for transporting vessels in and about the Harbour of Saint John”, through a scale based on tonnage. For instance, a vessel over 400 tons paid \$4 for a movage plus 25¢ for every 50 tons over 400.
- (k) The statutory exemption for Canadian ships was lowered from 200 to 150 tons. All vessels outward bound were also exempted beyond the first boarding District. Movages did not come under the compulsory system.

Until this By-law was repealed in 1920, it was amended at least 16 times (Exs. 1460(f) to (t)), a number of the amendments varying the rates and the exemptions. The main features of the various amendments were as follows:

- (a) On May 20, 1875, following the abrogation of Sec. 16 of the Act, the Pilotage Authority by resolutions approved by the Governor in Council on July 9, 1875, reappointed the same person as its Secretary and Treasurer and fixed his salary at \$800 per year, to be paid out of pilotage dues and fees for licences. Similar authorization was obtained from time to time, e.g., Order in Council P.C. 1560 of 1917 when his salary was raised from \$1,000 to \$1,200 (Ex. 1460(t)).

- (b) The 2½ per cent compulsory deduction for the Pilot Fund was cancelled and instead the outward pilotage rate was raised from \$1 to \$1.25, the additional \$25¢ being retained by the Authority to pay the salary of its Secretary and Treasurer and its other operating expenses, and any surplus at the end of the year becoming part of the Pilot Fund (Order in Council P.C. 625 dated July 9th, 1875, Ex. 1460(f)).
- (c) Pilot's licences were limited to one year and were renewable annually for a licence fee of \$5 (Order in Council P.C. 625, dated July 9, 1875, Ex. 1460(f)). This, no doubt, was merely a device to raise money to pay District expenses since licence fees were to be used for that purpose according to the 1875 amendment of the Act, but it was illegal because, at that time, the Act did not authorize the Pilotage Authority to limit the duration of licences. Such power was not introduced into the Act until 1882 when an amendment (45 Victoria c. 32) stipulated that the term could not be less than 2 years. Furthermore, it was specifically laid down that this power did not extend to the Pilotage Authority of Saint John and it was only in 1927 (sec. 434) that it was made applicable to all Districts.
- (d) On April 23, 1878 (P.C. 314, Ex. 1460(g)), a form of grading in pilots' licences was introduced. The amendment provided that at the option of the Pilotage Authority a first licence could be granted limited to vessels not exceeding 500 tons registered nor 12 feet draught of water.
- (e) On March 28, 1894 (P.C. 840, Ex. 1460(l)), the Governor in Council approved the Pilotage Authority's regulations providing for repayment to the members of the Authority of expenses necessarily incurred in the discharge of their duties to a maximum of \$100 per member and \$200 for the Chairman for their expenses in any one year. The legality of this blanket authority was questioned by the Saint John Board of Trade in the Brief they presented to the Smith Commission of Inquiry. (Ex. 1324, pp. 302 and 303). This provision was enacted to conform with the general order issued in 1889 by the Governor General (vide p. 173).
- (f) On May 1, 1901 (P.C. 895), the pilots were required to provide the Master of the vessel they were piloting inward with a copy of the quarantine regulations, to see that the quarantine flag was displayed if *pratique* was required, and, to hold the vessel in the quarantine district until the inspection was carried out, under pain of paying the vessel the expenses it would be put to by a pilot's failure in these respects and this to the extent of the pilotage dues payable (Ex. 1460(m)).

- (g) On November 28, 1914 (P.C. 2968), the Chairman and the Secretary of the Pilotage Authority were empowered to order “the captain or the Pilot in charge of any pilot boat in commission” to “cruise the districts in the Bay of Fundy for vessels”, under pain of seeing the licence of their pilot vessel withdrawn or suspended. The amendment also provided for the suspension by the Pilotage Authority on complaint of the captain or a majority of the pilots of a pilot vessel of any pilot who refused to contribute and pay his share according to his ownership in the licensed pilot vessel for the upkeep, provisions, supplies, wages, etc., necessary for cruising (Ex. 1460(s)).

During the period 1873-1920 the pilotage organization of Saint John was subject to a number of public investigations. In general, the shipping interests and the Board of Trade mainly opposed the compulsory system while at the same time arguing that the costs of pilotage were too high.

(4) DEPUTY MINISTER WILLIAM SMITH'S INVESTIGATION 1891
(Ex. 1530(b))

Following complaints made by local interests, in January, 1891, the Deputy Minister of Marine held an investigation at Saint John to determine whether vessels up to 250 N.R.T. should be exempt in that District. It was stated that the payment of dues was an improper and unwarranted imposition on coasters regularly trading these waters, that the then existing exemption up to 125 N.R.T. had caused schooners to be built “small broad and shallow” at the expense of safety in order to come under the 125 N.R.T. exemption provided in the By-law and to escape compulsory payment. In the name of the Pilot Commissioners who did not attend the inquiry, the Secretary of the Pilotage Authority stated that the choice pilot system was built up on tips and rebates and had to be done away with. The pilots, who were then 31 in number, opposed the extension of exemptions on the ground that it would result in a substantial loss of their revenue which would oblige them to quit the service.

The case against compulsory payment must have been unconvincing since no change was made either in the Act or in the By-law, except in 1892 (55-56 Victoria c. 20) by raising the absolute statutory exemption for small ships of any nationality from 80 N.R.T. to 125 N.R.T., thereby depriving the Pilotage Authority of the powers to lower the existing exemptions as had been done by regulation.

(5) SMITH REPORT 1895 (Ex. 1324)

In 1895, Captain William H. Smith, R.N.R., assisted by Captain Bloomfield Douglas, R.N.R., carried out an investigation into the pilotage system at Saint John after the city Board of Trade had formally requested the Government to abolish compulsory pilotage dues in the District. After holding public hearings, their main recommendations were that the compulsory system be abolished, that the number of pilots be reduced from 28 to 20 in order to reduce costs and that a tonnage tax be levied to alleviate the temporary financial burden of the pilots thus displaced.

A form of controlled pilotage was also recommended through a suggestion that the boarding districts be replaced by a few well situated boarding stations where ships would be certain to find pilots and that the number of pilot vessels be reduced to three to which all the pilots would belong.

The Report showed how ineffectual and inequitable the compulsory payment system was with exemptions granted for many reasons unrelated to the safety of navigation. It pointed out that the system of boarding areas (districts) extending over a great expanse of water was both inefficient and detrimental to the safety of navigation. A ship navigating through these waters when visibility was low was obliged to proceed slowly for fear of colliding with pilot vessels and yet when a Master needed a pilot he could not know exactly where to find one in that vast area.

With regard to marine insurance and the possibility of insurance on shipping being affected by abolishing compulsory pilotage or by the extension of the principles of exemption, the investigation had revealed that the underwriters were content to leave the employment of pilots entirely to the option of the owners or Masters of ships. The Commission was of the opinion that the partial or complete abolition of compulsory pilotage dues would not affect insurance rates on shipping, especially because it was known that duly qualified pilots were available to assist Masters as required.

The Report proposed that there be direct Government control over the activities of the Pilot Commissioners by requiring that all their decisions be subject to the approval of the Minister of Marine and Fisheries. It further suggested that their number be reduced from 7 to 5.

The Commission recommended that pilotage dues be levied on registered tonnage instead of draught, pointing out that local interests and some of the pilots had so recommended.

There were also a number of conclusions regarding qualifications of pilots, exemptions and tariff.

It would appear that the inquiry served little purpose at the time. In view of the nature of the pilotage organization permitted under the Act, the special status of the Pilotage Authority of Saint John and the special statutory provisions governing its organization, an amendment to the Act would have been required to implement most of the recommendations. This was not done nor was there even any change in the By-law.

(6) ROBB REPORT 1918

In 1918, the pilotage service in Saint John was studied by a Royal Commission, under the chairmanship of Mr. Thomas Robb, whose mandate also included the Pilotage Districts of Miramichi, Sydney, Louisburg, Halifax, Montreal and Quebec. Its Report (Ex. 1328) contained three main recommendations for Saint John:

- (i) the Minister of Transport to replace the local Commission as Pilotage Authority;
- (ii) the system of boarding districts to be abolished and instead the limit of pilotage waters to be set some 8 miles seaward of Partridge Island;
- (iii) fully controlled pilotage to be established by replacing the two pilot boats then in operation with a steam pilot tender provided by the Authority.

At that time, the principal causes of difficulty were disputes between Masters and pilots and quarrels among the pilots themselves. The Report considered the new system "would also put an end to the disputes which have arisen in connection with the competitive arrangement which now exists, whereby a ship may be called upon to pay two pilotages, owing to not taking a pilot who claims to have offered his services first, and not being seen by the ship".

The two pilot vessels were the schooners *David Lynch* and *Howard D. Troop*, the latter 105 feet overall, beam 23 feet, 69 tons net. They were owned by two groups of pilots who competed for pilotage clients. It is reported that one pilot lost his licence because the Pilotage Authority was unwilling to grant him "a flag share" when the mortgage on his shares in one of the pilot vessels was foreclosed. A "flag share" was a licence permitting him to use a small boat for boarding vessels which was not allowed under the existing By-law.

When the Report was made there were 14 branch pilots and four apprentices whose main occupation was to man the pilot vessels during their five-year apprenticeship. It had been the practice for the pilots on board each pilot vessel to pool their pilotage earnings, sharing being based on availability for duty. However, this was not provided for in the By-law.

The Robb Commission's recommendations were all implemented.

(7) MINISTER AS PILOTAGE AUTHORITY (1918 TO DATE)

In 1904, the Act had been amended to permit the Minister to become Pilotage Authority for any District, provided the Governor in Council considered the appointment was in the interest of navigation and it was recommended by local interests. On December 21, 1918, Order in Council P.C.

3135 appointed the Minister of Marine and Fisheries Pilotage Authority in lieu of the St. John Pilot Commissioners. The Order in Council states that such a move had been recommended by the Board of Trade of Saint John and by the Robb Royal Commission (Ex. 1460(u)).

The other recommendations of the Robb Commission were implemented by the Minister as Pilotage Authority when a new set of By-laws was approved in 1920.

When the Minister became Pilotage Authority, basic changes were made in the pilotage organization at Saint John. As recommended by the Robb Commission, this Pilotage Authority exercised full control over the organization of pilotage and the provision of services under the local management of its representative, the Superintendent of Pilots, but with actual direction from Ottawa. Pilots became *de facto* employees assigned to a tour de rôle system and paid a share of the net District earnings. A superannuation plan was instituted. Operating the pilot vessels became a responsibility of the Pilotage Authority until it was taken over by the Government in 1959.

During that period, there were four General By-laws in 1920, 1934, 1957 and 1960.

On August 25, 1920, by Order in Council P.C. 2013 approval was given to a new General By-law abrogating the previous one. Its main features were as follows:

- (a) It purported to modify the District limits in implementing the Robb Commission's recommendation regarding boarding areas. This was obviously the wrong procedure and, therefore, illegal as *ultra vires* of the Pilotage Authority's regulation-making power.
- (b) The system of boarding districts was abolished and a single rate was provided for voyages based on draught of water which differentiated between sailing ships and steamships, the latter paying a higher rate. In addition to movages, new items were added: a detention charge of \$5 per day after three hours, and rates for compass adjusting and trial trips.
- (c) Pilots were recruited in two ways:
 - (i) as formerly, through apprenticeship with practically the same prerequisites including the requirement to serve on board the Pilotage Authority's pilot vessels;
 - (ii) from qualified, experienced mariners between 30 and 50 years of age holding certificates of competency as Master foreign-going or Master coasting passenger trade in Canada who had served as such and had also passed a prescribed examination.
- (d) The first licence was probationary for six months; it was replaced by a permanent one after satisfactory service.

- (e) Temporary licences could be issued in case of emergency, the pilot so appointed being paid for his services a stated amount per day out of the Pilotage Fund as determined by the Minister.
- (f) The pilots were treated as *de facto* employees. Apart from being assigned to duty by the Superintendent, they were paid through a pool system and a ceiling was imposed on their salary. Seventy per cent of the pool money was shared among the pilots on the basis of availability for duty provided that the share, including the part deducted for the superannuation fund, did not exceed \$300 per month. The other 30 per cent was used to meet District expenses which consisted mainly of the cost of operating the pilot vessels. Any unexpended balance at the end of the year was shared among the pilots on the same basis, provided the aggregate total did not give any pilot a salary higher than \$300 per month.
- (g) The pilots were granted 21 days annual leave with pay and also sick leave with full pay, half pay and without pay.
- (h) A Pilots' Committee was established.
- (i) A superannuation scheme was created. The monthly compulsory contributions were to be fixed by the Minister after consultation with the Pilots' Committee.

This By-law was amended only once. The amendment consisted of imposing a 5 per cent reduction for a period of one year on all pilotage earnings except on movages and detention (P.C. 906 dated May 10, 1933) (Ex. 1460(w)).

This By-law was not only a departure from the practice that had been followed up to that time but was also in conflict with the only permissible type of organization that was then, and still is, lawful under the governing statute. Most of its new provisions were illegal.

On August 22, 1927 (P.C. 1698) the Governor in Council authorized the Minister of Marine and Fisheries to make a \$20,000 loan, interest free and to be repaid within 20 years, to finance the building of a "large and speedy auxiliary pilot vessel" that was needed "to maintain the Pilotage Service at Saint John, New Brunswick, consistent with the ever growing traffic and the best interests of the port and shipping". The funds were to be provided from the Parliamentary Appropriation "Administration of Pilotage"; the Government loan and the cost of keeping the vessel insured were to be guaranteed by the pilots' earnings against which they were to be a first charge (Ex. 1460 (w)(1)).

The 1934 General By-law (P.C. 3067 dated December 12, 1934, Ex. 1460 (x)) did not differ substantially. The main changes were:

- (a) the maximum permissible annual salary per pilot was increased to \$4,000;

- (b) any surplus at the end of the year which could not distributed should either be employed for the improvement of the service or be paid over to the Receiver General of Canada;
- (c) the pilot vessel was to be purchased by the Authority out of District revenues and owned by it;
- (d) a certificate of competency not lower than mate coasting was added to the prerequisites for apprentices;
- (e) the probationary period was extended to one year;
- (f) the provision regarding emergency licences was deleted;
- (g) the superannuation benefits were raised to \$35 per year of service;
- (h) various provisions were added to ensure the physical fitness of pilots.

This By-law was amended fourteen times before it was replaced in 1957.

The main amendment came in 1941. It abrogated the provision imposing a ceiling on the pilots' annual earnings (P.C. 3251 dated May 7, 1941, Ex. 1460(x4)). Many amendments concerned superannuation and contained provisions aimed at re-establishing the actuarial solvency of the Superannuation Fund.

In 1944, it was realized that seven of the licensed pilots of Saint John, who were authorized by their pilot licence to take charge of any ship for the purpose of pilotage, could not take command of the District pilot vessels because they did not hold a Master's certificate of competency as required by the Canada Shipping Act. The Government resorted to the War Measures Act to correct this anomaly by enacting that on account of their training, experience and local knowledge these seven pilots were authorized to take command of the pilot vessels in the same manner as other licensed pilots who held a certificate of competency (P.C. 6673 dated Aug. 25, 1944, Ex. 1460(x5)).

During the depression years in the thirties it became necessary to reduce pilotage rates in order to assist shipping but in 1948-1951 the Government took steps to encourage the pilots in Saint John, Halifax and Sydney by guaranteeing them a minimum annual remuneration through provision in the Department of Transport estimates for subsidies if required. It was considered that it was in the public interest to maintain the pilotage service in these harbours. In the event, these subsidies were never used because the pilots' remuneration did not fall below the stipulated minimum but they did provide a source of reassurance. (Vide Part I, p. 120.)

(8) SLOCOMBE REPORT

Captain F. S. Slocombe's Report, dated March 4, 1947, includes the following information regarding the Saint John Pilotage District:

Special Features of the District

"In addition to the difficulty occasioned by fogs in summer and vapour in winter in the Bay of Fundy, Saint John Harbour itself can be said to be a dangerous harbour in which to navigate. The tidal currents, in alternate conjunction with and opposition to the Saint John River current, present an extreme hazard, necessitating a high degree of skill and local knowledge on the part of the pilots. The current is always across the end of the wharves, and has been logged by port engineers at seven knots. The rise and fall is from twenty-four to twenty-eight feet. On flood tides the current at three fathoms depth is running in, while the surface current is running out. The well known reversing falls are a feature of the harbour, and these were navigated frequently during the war years, although not so frequently now.

An example of the disastrous results which may almost instantaneously follow and error in judgment or a failure of equipment was the stranding and subsequent total loss of the S.S. *Beaverhill* in 1944." (p. 52).

Conditions of Service

"There are ten active pilots...considered the normal complement for peacetime.

In wintertime, (the busy season) five pilots take the incoming ships and five the outgoing, changing over every Monday morning. The five inward pilots remain on the pilot boat for the week, while the outward pilots live at home, on call for outgoing ships and for movages in the harbour. After they have taken a ship out the boat returns them to the harbour.

The pilot boat lies at Reed's Point Wharf, within the harbour, where there is a room maintained by the pilots, with telephone connections. The next pilot on turn is in charge of the boat until approaching an incoming ship, when he hands over to his successor on turn, who lays the boat alongside the ship for him to board."

"In a normal winter it is expected that each pilot will on an average do at least one job every day. It usually takes about four hours to meet a ship and dock her." (p. 53).

Representations of Pilots

The pilots complained that their income was low and proposed one of three remedies:

- (i) increase the rates from \$3 to \$4 per foot draught;
- (ii) the Government take over the operating expenses of the pilotage service;
- (iii) grant a subsidy of \$12,000 per year.

Shipowners and agents were opposed to any increase in pilotage dues because they were not optimistic about the future of the port and because they felt the Government should do more to assist the pilots.

Appendix 4 to the Saint John Report is a history of pilotage rates since 1934 with references to the relevant Orders in Council.

(9) AUDETTE REPORT

A Committee under the Chairmanship of Mr. L. C. Audette reported in November, 1949, on pilotage matters in various Districts. The recommendations for Saint John were:

- (i) That the Department of Transport should be responsible for the pilot vessels. Since this service was provided in some Pilotage Districts, all Districts should be treated equally.
- (ii) By a majority decision the Committee recommended against a guaranteed minimum income.
- (iii) That the requirement for apprentice pilots to serve four years in a pilot vessel should be abolished on the ground that such service does not constitute adequate training. In lieu, it was recommended that the apprentices perform certain pilotage operations with licensed pilots. It was considered that the existing requirements for sea experience and class of certificate should be retained.
- (iv) With reference to the Canada Shipping Act, sec. 338 (present sec. 346), the majority of the Committee agreed with the Saint John pilots that "Government ships engaging in commercial enterprises should not be exempt from the compulsory payment of pilotage dues".

Following the Audette Report, the Department of Transport was authorized by Order in Council P.C. 120/422 of January 25, 1951, to assume the cost of operating the Districts of Sydney, Saint John, Halifax and British Columbia and of operating the pilot vessel service in them (Ex. 52).

In 1950, by an amendment to sec. 338, 1934 C.S.A., the absolute exemption enjoyed by Government ships was withdrawn for ships operated and managed by a Crown agency (vide p. 270).

On June 20, 1957, a new General By-law (P.C. 1957-874) was approved. It remained in force until replaced in 1961 by the current By-law. This General By-law did not reproduce the description of the limits of the District as allegedly fixed by the General By-law of 1920. On this occasion, the situation was legalized by enacting a Governor General's Order dated March 5, 1959 (Order in Council P.C. 1959-272, Ex. 1460(ee)) which made the seaward limit of the District a straight line joining two geographical points. It abrogated the description contained in the previous Order in Council (P.C. 182 of March 1, 1875). The new description reads as follows:

"The Pilotage District of Saint John, New Brunswick, comprises the waters of Saint John Harbour from a line joining Green Head and Bear Head on the Saint John River and the waters to seaward as far as a line joining Split Rock (Musquash Head) and Cape Spencer".

The new General By-law caused the following basic changes:

- (a) apprenticeship became the sole source of pilot candidates;
- (b) the minimum requirement became a certificate of competency as first mate of a steamship in the home trade or as second mate of a foreign-going steamship;
- (c) apprenticeship was to be served in the company of licensed pilots on pilotage assignments.

This By-law was amended once in 1959 (P.C. 1959-1603, Ex. 1460(cc)). To meet the requirement of the Treasury Board contained in P.C. 1959-19/1093 (Ex. 52), a pilot boat charge of \$10 was added. It was to be paid over when collected to the Receiver General.

The 1961 General By-law (Ex. 17) abrogated and replaced the 1957 General By-law. It is analyzed on pp. 32-33. The main change was the abolition of the apprenticeship system and a return to the practice of recruiting pilots from experienced mariners with actual experience of navigation in the District.

In 1964, the District limits were again altered as indicated on p. 30 in response to a complaint made by the pilots before this Commission (Ex. 1460(dd)).

Chapter B

BRIEFS

Three briefs concerning the Saint John District were filed by:

- (1) The Pilots of the Pilotage District of Saint John (B-1 and B-57, Ex. 39 and Ex. 1438).
- (2) Kent Line Limited, Irving Oil Company, Limited, and Irving Refining Limited (B-21, Ex. 412).
- (3) Saint John Steamship Committee of the Shipping Federation of Canada (B-2, Ex. 60A).

The reference after each Recommendation shows where the question raised is dealt with in the Report.

(1) SAINT JOHN PILOTS' BRIEF

The brief was presented by the Pilots' Committee on behalf of the nine pilots in the District. They are not grouped in any association or corporation.

Recommendations

The pilots' recommendations, as per their brief and its schedule "D", are as follows:

- (a) pilotage service in Saint John harbour is a necessity (p. 138);
- (b) the pilot boat now in service is suited to local conditions and any future boats should be of a similar type; it should be equipped with a recording depth sounder (p. 78);
- (c) draught should remain the basis for calculating tariff with a surcharge for "supertankers" of one cent per ton over 8,000 tons (p. 123);
- (d) there should be no change in the method of handling the pilotage fund (pp. 128 and ff.);
- (e) the pilots' strength should be increased by one, from nine to ten (pp. 74 and ff.);
- (f) the pension scheme should remain as at present (pp. 135 and 136);
- (g) the District limits should be extended (p. 57 and pp. 137 and 138);
- (h) the system of aids to navigation should be improved.

(2) KENT LINE LIMITED, IRVING OIL COMPANY, LIMITED
AND IRVING REFINING LIMITED'S BRIEF

These are three companies in Saint John owned by Mr. K. C. Irving. They have a considerable interest in navigation and pilotage.

Kent Line Limited is the local agent of the California Shipping Company which owns or charters "supertankers", *inter alia*, *Hydroussa* (12,907 NRT), *George A. Davidson* (15,743 NRT) and *Petro Sea* (20,035 NRT), and also of the Irving Oil Company Limited which is the owner of the following tankers: *Irvingdale* (6,000 NRT), *Irvingglen* (8,000 NRT) and *Irvingstream* (10,000 NRT).

Irving Refining Limited operates a crude oil refinery situated in Courtenay Bay. The crude oil is brought in by the tankers of California Shipping Limited and most of the finished products are shipped in Irving Oil Company Limited tankers. This company is totally dependent upon water transportation.

Irving Oil Company Limited is the transport company for the finished products of the refinery.

The Irving interests also control many other corporations in Saint John, *inter alia*, "J. D. Irving, Limited" which owns tugboats for harbour and river work; "Saint John Shipbuilding and Dry Dock Company", situated in Courtenay Bay near the refinery and which has one of the biggest dry docks in Canada; and "Atlantic Sugar Refinery Co. Limited", situated on the main harbour.

Recommendations

- (a) that the proposed surcharge on "supertankers" should not be approved (pp. 121-123);
- (b) that pilots have no authority to select, engage or choose the tugboats to be used in handling ships (pp. 101 and ff.);
- (c) that the selection of a pilot for a particular ship or its movement should be the user's privilege (pp. 94 and ff.).

(3) SAINT JOHN STEAMSHIP COMMITTEE
OF THE SHIPPING FEDERATION OF CANADA'S BRIEF

The Shipping Federation of Canada, with its Head Office in Montreal, is composed mostly of shipowners and agents of ocean-going vessels on the east coast. The Saint John Steamship Committee is one of the regional committees and its Chairman in 1963, Mr. H. E. Kane, directed an agency in Saint John, New Brunswick, named H. E. Kane Agencies, Ltd., Steamship Agents and Chartering Brokers. The Committee represents the main shipping interests in Saint John.

Recommendations

The Committee's recommendations are in the form of a letter addressed to the Commission dated February 6, 1963, which advocates:

- (a) the establishment of a uniform system of pilotage routine, particularly in regard to designating the hours for berthing, departing and shifting from berth to berth (pp. 86-88);
- (b) the appointment of a qualified person to furnish information about the movements of vessels in the harbour (pp. 86-88);
- (c) the organization of a Central Agency to control harbour traffic and to determine where pilotage and tug service will be most efficiently employed (pp. 86-88).

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

The Saint John Pilotage District as defined in P.C. 1964-19, dated January 10, 1964, comprises the waters of Saint John harbour and approaches as well as a portion of the Saint John River which empties into the harbour, including the Reversing Falls. The 1964 amendment to the limits came as a result of a recommendation made by the pilots before this Commission in order to make the legal limits agree with the factual situation. The seaward limit at that time was a straight line joining the same points, whereas the present limit extends further down the Bay to the apex of two bearings (vide p. 30). In schedule "C" of their brief the pilots stated that it was frequently necessary for the pilot vessel to go beyond the seaward limit in order to board incoming ships in heavy weather (Ex. 39).

(2) PHYSICAL FEATURES

The city of Saint John is situated on the north shore of the Bay of Fundy. Its harbour is formed by the mouth of the Saint John River which flows for some 450 miles through Maine and New Brunswick. The harbour is remarkable for extremely high tides which are reputed to have the widest range in the world; significant currents caused by the outflow from the Saint John River through the harbour and its approach channels, especially during the spring freshet; the Reversing Falls; exposed approaches, particularly when the wind is from the south; limited and varying depths of water both in the harbour and in the approach channels; and fog during the summer months.

The Nova Scotia (S.E. Coast) and Bay of Fundy Pilot (Fourth Edition—1966) (Ex. 38), contains the following observations:

"It is recommended that vessels should embark a pilot before entering Saint John Bay; during thick weather, the rapid tidal streams, particularly during freshets, render the navigation of the bay unsafe for vessels without local knowledge. Spring tides reach a range of over 30 feet..."

"No vessel, without local knowledge, should proceed northward of Partridge Island."

"Thick weather.—Anchorage.—Fogs occur somewhat frequently in the vicinity of Saint John, particularly in the early part of the day, from the middle of June till the end of August."¹

"Tidal streams.—During the thaw in April and May, the great volume of water discharging from Saint John River causes, in the harbour, a constant out-going surface stream to a considerable depth which at times attains a rate of 5 knots. With normal conditions, after the freshet, the surface currents, with rising tide, may be misleading. After half tide, rising, an outward surface flow may still be very evident, while underneath but coming nearer the surface as the tide continues to rise, a strong inward current may exist."

"Caution.—Depths.—Due to continuous silting, the dredged depth in Saint John Harbour are subject to change. Mariners should exercise due caution."

The main harbour channel requires little dredging: some was done in 1961 at the junction with the Courtenay Bay channel, some in 1960 at the Partridge Island shoal, and some in 1957 at the northern end of the main channel.

Silting is a more serious problem in Courtenay Bay. Maintenance dredging is done annually, both in the channel and inside the Bay, to a depth of 20 feet. The average siltation is 1.3 or 1.4 feet per year but it does not spread evenly throughout the Bay: the worst areas are at the southeast-southwest end of the breakwater and in the turning basin.

Silting of one foot per year of which the pilots were unaware, especially at the end of the breakwater in the Courtenay Bay channel, would be very dangerous to shipping. The pilots reported that in 1963 during a storm the end of the breakwater in Courtenay Bay silted up to three feet in 24 hours. Soundings are taken by the Department of Public Works in the Courtenay Bay channel every four to six weeks with a sounding machine. The data chart is sent periodically to the Port Manager and the Marine Agent, but is not forwarded officially to the pilots although it is available to them.

Year	Cubic Yards	Cost
1960.....	106,166	\$152,879
1961.....	119,103	113,028
1962.....	113,601	102,794
1963.....	59,452	74,909
1964.....	102,062	65,115
1965.....	76,473	75,708
1966.....	61,171	51,873
1967.....	50,708	44,014

The necessary dredging is carried out by the National Harbours Board at berths 1 to 13, and occasionally at berth 14. The extent of this dredging and the cost to the National Harbours Board from 1960-1967 were as above (Ex. 1534).

¹ One year there was fog for 27 days in June. Fog is experienced 50% of the time during a normal summer.

Dredging in the channels and turning basin is the responsibility of the Department of Public Works. During the same period, the Department of Public Works did the following dredging at the quoted cost (Ex. 1534):

Years	Description	Cubic Yards	Payments Made to Contractors
1960-61.....	Channel in Courtenay Bay to 20 ft.	83,257	\$ 97,210.60
1960-61.....	Channel in Courtenay Bay to 20 ft.	43,369	61,503.39
1960-61.....	Channel & turning basin to 20 ft.	361,231	417,629.97
1961-62.....	Channel & turning basin to 20 ft. shoal in Main Channel to 28 ft.	840,125	542,117.75
1962-63.....	Three areas in channel to 20 ft.	688,205	632,857.32
1963-64.....	Channel to 20 feet; berth at Broad Street wharf for N.H.B. to 22 ft.	706,186	611,062.52
1964-65.....	Channel to 20 feet; berth at Broad Street wharf for N.H.B. to 22 ft.	678,935	319,099.45
1965-66.....	Channel to 20 feet; berth at Broad Street wharf for N.H.B. to 22 ft.	656,236	418,678.57
1966-67.....	Channel and turning basin to 20 ft.	600,051	526,244.73
1967-68.....	Channel and turning basin to 20 ft.	600,015	418,243.57

Surveys and inspection costs would add approximately 10% to the above figures.

The *water density* factor must be considered with deep draught vessels when there is little under keel clearance because salt and fresh water may make a difference of as much as nine inches in draught. The density varies with the state of the tide. During the spring freshet the water in the main harbour is practically all fresh.

The *hydraulic suction or squat* factor must also be considered with any type of ship when there is little under keel clearance. Squat increases with speed and varies with the shape of a vessel, e.g., tankers, which are built like a box, are more affected by hydraulic suction. Squat may cause a vessel to settle in shallow channel so that flotation practically ceases. When a ship "smells the bottom" there is danger of sheering because she will not answer the rudder. Although this is one of the difficulties encountered when piloting tankers into Courtenay Bay, no accidents due to squat had been reported up to the time of the Commission's hearings.

(3) DESCRIPTION OF SAINT JOHN HARBOUR

The Saint John Harbour is divided into three main areas—the main harbour, Courtenay Bay and the Saint John River above the Reversing Falls. Harbour facilities are limited by the depth available in the channels and alongside the wharves, and by tides and river currents.

(a) *Main Harbour*

The main harbour is at the mouth of the Saint John River. There is constant conflict between the high tides and the outflow from the river: when the river is high the down current is stronger and lasts longer even against a flood tide. The river rises twenty-four hours after rain and is at its highest during the spring freshet when it may reach twenty feet above normal. Easterly winds reduce the effect of ebb tides and increase the amount of salt water entering the harbour during flood tides.

The seaward entrance is a straight channel 600 feet wide with a controlling depth of 25 feet (dredged to 28 feet).

All berths in the main harbour are tidal and the approaches to several berths are seriously affected by the tides and the river currents. Hence, vessels must wait for a safe navigation period, which is limited to some two hours before and after high water depending on the size of the ship and the prevailing weather. Ships usually berth with the aid of hawsers and always require the assistance of tugs.

The pilots pointed out that in Canadian Hydrographic Service chart 4319 berths 6 and 7 have been incorrectly identified.

The harbour is open throughout the year and is an important winter terminus of ocean shipping. It is a Port of Entry. Ships of very large size can be accommodated.

Saint John Harbour is a safe port for a qualified seaman with local knowledge but "is no place for an amateur". Captain Arthur R. Conley, Master since 1946 of the S.S. *Princess Helene*, stated that it is not safe for a Master who is not well acquainted with the harbour to come in without a pilot and that he would take a pilot whenever he had to go elsewhere than his regular berth, e.g., Courtenay Bay dry dock or the west side of the main harbour as he was forced to do twice because of hurricane threats. The *Princess Helene* of 4,000 gross registered tonnage was 343 feet in length and 52 feet beam, drew 17.6 feet fully loaded and had a cruising speed of 16.5 knots. She was equipped with radar, echo sounder and D/F. However, in Captain Conley's opinion the harbour is safe for an experienced Master. Since 1928, there have been only five groundings of importance: three were due to current, one to the propeller being fouled and one through lack of knowledge. This last case concerned a destroyer whose Captain thought he had sufficient local knowledge and did not take a pilot. On one occasion a vessel belonging to the Manchester Line drifted out of control and in 1944 the *Beaverhill* loaded with ammunition foundered in the harbour.

(b) *Courtenay Bay*²

Courtenay Bay is entered by a channel branching off the main channel at an angle of approximately thirty degrees. The width of the entrance decreases from some 800 feet at the fork to some 400 feet at the breakwater. The controlling depth is 16 feet (dredged to 20 feet).

The main navigational hazard is the Saint John River current which flows out of the main harbour across the Courtenay Bay channel. The cross currents and the depth of the channel up to the period of high water slack restrict inward traffic. Crude oil tankers over 8,000 net registered tons (locally called supertankers) which draw up to 35 feet are particularly affected. Navigational conditions south of the breakwater also impose limitations. The pilots try to reach the end of the breakwater approximately one hour before high water but never later than one hour after high water on an ebb tide.

These tankers can be brought in during daylight only, and at times during the freshet the cross current makes it impossible for them to enter the Courtenay Bay channel. If they are taken into Courtenay Bay in the freshet season, they are usually lightened first.

Mr. James M. Fraser, Naval Architect and former Superintendent of the Saint John Dry Dock, informed the Commission that these crude oil tankers are very large vessels to manoeuvre in such a confined area. Under such conditions, ships of this type can not be driven at speed because it requires a long distance to lose way. Full power is seldom used in the confined and confused waters of Saint John Harbour. Because of the tankers' weight the tugs sometimes lose control and if they are caught in the currents "the ship takes charge". Once committed to a course, there is no room to turn around: the tanker must be taken directly in to Courtenay Bay or to the main harbour.

When the Commission was sitting at Saint John, N.B., on February 14, 1963, (it was not the freshet season) two large tankers had arrived the day before and were at anchor off Partridge Island: the *T.L. Lenzen* (draught 34 feet 11 inches) and the *Chevron Transporter* (estimated draught 32/33 feet). The *T.L. Lenzen* was to be berthed at 2:45 p.m. February 14. However, it was decided in the morning that due to the ground swell in the main channel and the Courtenay Bay channel it would be dangerous to bring the ship in. The limited depth of the Courtenay Bay channel plus the moderate tide of the day gave a maximum depth of approximately 38 feet. If the *T.L. Lenzen* drawing 34 feet 11 inches had happened to roll unduly, she would have caught her bilge because the depth of the channel was further limited by the ground swell and also because the ship would sheer when approaching the Courtenay Bay channel, since the swell would have forced

² Vide also the controversy over piloting large tankers into Courtenay Bay during the freshet, pp. 88 and ff.

her to port. The Master and the Company representative were satisfied that it was dangerous for the ship to come in under such conditions. The wind was southwest, about 25 to 30 miles per hour and, since the Courtenay Bay channel is oriented in an easterly direction, the ship would ride with the ground swell from the Bay of Fundy on her quarter, thus causing her to roll.

During freshet periods it is sometimes impossible to bring such tankers in even when they have been lightened. Their length—650 to 700 feet—has to be considered. The most dangerous time is when approaching the end of the Courtenay Bay breakwater. As the ship passes the end of the breakwater the bow moves into slack water, while her stern is still in the strong down current. This causes the ship's bow to sheer to port across the channel.

These tankers pose a very difficult problem in fog; if one grounded in the channel there would not be time to lighten her before an ebb tide left her high and dry.

Pilot A Vallis, licensed in October, 1961, stated that he had had no occasion to bring a "supertanker" into Courtenay Bay during the freshet season, because such an assignment had never coincided with his turn of duty, and his first experience with the freshet was when he piloted the *Irvingdale*, which had just lightened the tanker *Venture*. The *Irvingdale* was drawing 27 feet 6 inches and it was high water. As he approached the foul ground buoy he tried to swing to starboard in order to counteract the current, but, although the rudder was hard to starboard and the engines at full ahead, the ship did not respond but went straight ahead and passed over spar buoy 63-J. Then the ship started to respond and brushed by the other buoys. There was such a strong current on the port quarter that the rudder had no effect on the ship whatsoever, despite the fact that the *Irvingdale* which is not a large ship, is equipped with motor engines and manoeuvres very well—much better than a large tanker which, under the circumstances, would have gone aground.

It was pointed out that Canadian Hydrographic Chart 4319 (Ex. 25) shows the light at the end of the Courtenay Bay breakwater in the wrong position.

Navigational difficulties in Courtenay Bay increase because larger ships are now calling. The *Otto N. Miller* arrived at the end of May, 1964—a new crude oil tanker belonging to Standard Oil, 760 feet in length, 103-105 foot beam, with a maximum draught of 38 feet 6 inches. She was drawing 38 feet at the time. She came in without difficulty because, fortunately, there was a 28-foot tide, but with a 24-foot tide, on which the shipping interests expect these ships to come in, there would be only 2 feet under keel clearance. This, the pilots claim, is insufficient for safe navigation.

(c) *Reversing Falls*³

The Saint John River narrows where it enters the harbour and thus impedes the free flow of both the downstream current and the flood tide. A difference in levels above and below the Falls is caused when the tide changes with the result that there is a downstream current at low tide and a reversed upstream flow at high tide.

Navigation through the Reversing Falls has no counterpart elsewhere. In these confined waters there are always currents setting in one or more directions, and only local knowledge and sound judgment can determine the safest time for navigation. According to the pilots, the Falls are safely navigable for some twenty minutes each tide (not for one hour and ten minutes at slack water as stated in the "Bay of Fundy Pilot"). There is no appreciable slack since tidal flow and river current are always present. The ideal time to transit the Falls is as near indicated slack water as possible.

Above the Reversing Falls the Saint John River is navigable for some distance: during the war, naval vessels used the upper reaches to a considerable extent but traffic has dwindled to the occasional pleasure craft and to the Irving vessels which call at the Pulp and Paper Mill on Union Point just above the Falls. There is very little traffic for the pilots, especially since the Irving interests stopped using licensed pilots and began providing their ships (which are normally exempt) with their own pilots. Licensed pilots are employed only on the rare occasions when other pilots are not available.

(4) AIDS TO NAVIGATION

The pilots were generally satisfied with the network of land-based and floating aids to navigation with which the harbour and its approaches are provided. They stated that they have obtained most of the aids they have recommended to the Department of Transport through their Pilots' Committee. However, they have made a number of suggestions.

There are two radio aids to navigation: the radio direction-finding beacon on Partridge Island which gives a continuous signal and the radio station near Red Head which is available to give a signal upon request in an emergency.

The Partridge Island beacon is accurate up to 15 miles from seaward after which it develops a 12 to 15° error, as Captain Conley, the Master of S.S. *Princess Helene*, discovered when he used it as a stern bearing while entering Digby. However, it is accurate inside 15 miles and when entering Saint John Harbour. The pilots have suggested that the beacon be lighted at night to permit calibration.

The Red Head signals are more accurate but since the installation of the Partridge Island beacon the Red Head radio service as an aid to Navigation

³ Vide also pp. 96 and ff. re controversy regarding piloting through the Reversing Falls.

has been discontinued. The pilots, as well as Captain Conley, recommended that the Red Head station be again placed in full operation as before.

The other improvements they recommended are as follows:

(a) *Courtenay Bay*

- (i) two sets of range lights to be provided, one for the first leg into Courtenay Bay, and the second, if at all possible, from the breakwater to the dry dock;
- (ii) further dredging to be effected at two places in the channel:
 - (A) the northwest end of the channel at the entrance of the turning basin to be enlarged in order to facilitate turning toward the shipyard;
 - (B) the southeast section of the channel to be greatly enlarged where it intercepts the main channel in order to give more sea room while encountering the cross-river current. "When you get ahead of the breakwater, you have to go full speed with the ship, and it is absolutely impossible to maintain full speed and then come down on the helm". With the proposed dredged area, the ship would have a little room to drift.

(b) *Approach Channel*

- (i) all buoys to be fitted with radar reflectors;
- (ii) Split Rock whistle buoy (B19.J) to be lighted. The pilots had numerous complaints from shipmasters entering the harbour that they could hear the buoy but were unable to see it, which is important because it is a departure buoy for the buoy off Black Point.

(c) *Main Harbour*

- (i) buoy 62.J at the head of the main harbour to be lighted, this being necessitated by the construction of the new long wharf which is subject to heavy current at all times, since it runs in a east-west direction instead of north-south as before; it is not a safe berth, tugs have no room to work alongside and the current ranges from 5 to 9 knots;
- (ii) pier No. 1 to be lengthened by adding to the end of No. 1 berth a crib or a solid pier to keep ships off the foul ground; modern ships overhang the berth and with a heavy southerly wind are "pushed around the corner".

On July 8, 1968, the Department of Transport informed the Commission that four of these recommendations have since been implemented: the northwest section of the Courtenay Bay channel has been partially enlarged (a)(ii)(A); all buoys in the main channel have been fitted with radar reflec-

tors (b) (i); Split Rock whistle buoy (B19.J) has been lighted (b) (ii); and pier No. 1 has been lengthened (Ex. 1460(ii)).

After a lengthy study of the navigational problems in Saint John, the Commission's Nautical Adviser, the late Captain J. S. Scott, made the following recommendations:

- “(1) An active dredging program, which will maintain the Courtenay Bay channel at a minimum depth of 20 feet, ordinary low water, at all times;
- (2) A dredging program, which will in a reasonable period, extend the northern limit of the Turning Basin by 400 feet;
- (3) A dredging program, which will in a reasonable period, widen the Courtenay Bay approach channel along a line forming the hypotenuse of an angle, starting at buoy 64 and ending at buoy 43. This will widen the channel by approximately 200 feet at the place where the greatest cross-tide effect is felt. This, I am convinced, will be a very vital improvement;
- (4) Under reasonable conditions, tankers up to 600 feet in length, can be handled at the Broad Street dock, day or night;
- (5) Tankers up to 600 feet in length, at light or loaded draught, can be docked or undocked at the Crude or Gasoline dock during daylight or darkness, in reasonable conditions;
- (6) Tankers over 600 feet in length, in ballast condition, can be undocked at the Crude or Gasoline docks at night, provided there is no more than a 12-knot wind, from any direction, and four tugs are available;
- (7) Tankers over 600 feet in length, in loaded condition, should not be docked at the Crude or Gasoline dock during the night hours;
- (8) On completion of the dredging improvements described in (3) and (2), it is considered that the entire Courtenay Bay area would be safe for both day and night movements;
- (9) The freshet phenomena poses its own problem, especially regarding its variable strength and duration. But it is considered that the dredging program shown in (3) will greatly lessen the hazard of getting loaded tankers into Courtenay Bay during the freshets. In the meantime, I concur with the pilots' reluctance to enter super-tankers at full freshet flow”.

The pilots did not place a great deal of reliance on shipborne aids to navigation. They consider that neither radar nor echo sounders are of much use to them.

Radar. Pilot Ronald V. Cobham stated that he relied very little on navigational electronic devices. To him, the availability of radar was immaterial because he had piloted ships in and out of Saint John Harbour for

years before its invention. He used it, however, when visibility was zero and he had never had a collision while using radar but, as far as he was concerned, it could be dispensed with.

He found it very unreliable on account of its failure to pick up some targets, such as wooden fishing boats and, at times, even the wooden pilot vessels, although they were equipped with radar reflectors. For instance, in January, 1963, when inbound with a "supertanker", he did not locate an outbound ship which had, on the other hand, picked him up on its own radar. When the pilot vessel *Pilot Boat No. 1* was sunk on January 14, 1957 (p. 80), by a vessel coming into the harbour and all hands were lost, there was a question of radar failure. On another occasion, the Master of a Union Castle ship is reported to have stated that he had not located the pilot vessel by radar and did not know the vessel was in the vicinity until it appeared alongside.

A report on pilotage in Saint John by the Commission's nautical adviser (Ex. 1460(kk)) contains the following pertinent information:

"August 31st [1963]—0930

I accompanied Pilot Ronald Cobham aboard Norwegian conventional-type general cargo vessel *Jane Stove*, arriving off St. John. This trip was of interest in that dense fog prevailed. The incoming vessel was 'found' by the Pilot boat radar and, after boarding, she was navigated by radar up the channel to abeam of Partridge Island, after which time the fog cleared. Vessel was berthed at the Pugsley berth without incident".

Echo sounder. It was felt by all concerned that the echo sounder is not a very valuable aid for pilotage purposes because, while it gives the depth of water under a ship, it does not indicate what depth the ship is approaching. The reports are sometimes false, due to side echoes or soft bottom and even water turbulence.

The bottom of Saint John Harbour is rock and mud: rock on the port side until the foul ground at buoy 54-J and to pier 14, and rock on the starboard side up to the Atlantic Sugar Refinery. It was claimed that the Department of Public Works' recordings taken with echo sounders are not accurate. In one instance, at berths 3 and 4, according to these soundings, there was supposed to be at least 29 feet of water but a ship piloted by Pilot Cobham drawing 20-22 feet went aground "in the middle of the slip".

(5) MARITIME TRAFFIC

Saint John and Halifax are the two main Canadian railway terminals on the Atlantic. Therefore, as far as exports and imports are concerned, Saint John not only serves the surrounding area but is also a transit port for passengers and merchandise bound to or from the United States and the rest of Canada. Its importance for international trade reaches a peak during the winter months when the St. Lawrence Seaway is closed and many

St. Lawrence River ports are also closed by ice to most ocean-going traffic and even to coastwise traffic. During the other eight months of the year, the port's chief activities are with local traders and deep-sea traffic falls off drastically. Hardly any foreign ships used to call outside the winter months before modern industries were established in the vicinity, *inter alia*, the Atlantic Sugar Refinery Co. Ltd. situated in the main harbour and the oil refinery, built in 1959, the dry dock and shipyard in Courtenay Bay. The pilots reported that when the oil refinery was completed not only were there more tankers bringing in crude oil but also more ships of other kinds, including those taking out oil products, as well as increased activity in the dry dock. The result was a greater demand for pilotage during the twelve months of the year.

The foregoing is borne out by the monthly analysis of cargo ships and tankers for the years 1959 to 1967 (Appendix B to this Section). It indicates clearly the striking increase in the number of vessels as soon as ice begins to appear on the St. Lawrence River, a date which varies from year to year from mid-October to mid-December. A peak is reached in January and maintained until March, a period when maritime traffic on the St. Lawrence River is reduced to a minimum. There is a sudden decline as soon as the St. Lawrence opens for general traffic, a date which varies from year to year from mid-March to mid-April. It is during this winter period that the major demand for pilotage occurs at Saint John.

It is also apparent from the graph in Appendix B that tanker traffic not only represents a considerable part of the overall traffic employing pilots but also, in contrast, is evenly distributed throughout the year.

The following table is drawn from information shown in graphic form in Appendix B. It shows the percentage of the total winter traffic (January, February, March and December) of the total arrivals for each year, and the percentage of the yearly tanker traffic of the total yearly arrivals.

Year	% of Total Winter Months' Arrivals*	% of Yearly Tanker Arrivals**
1959.....	61.9	22.0
1960.....	54.9	30.9
1961.....	53.0	36.1
1962.....	56.5	31.8
1963.....	53.3	32.1
1964.....	54.3	32.6
1965.....	53.1	31.9
1966.....	52.6	27.1
1967.....	48.9	27.9
Average.....	54.3	30.3

*Includes both ocean and coastal tanker, passenger, and cargo ships, as well as naval, Government and other non commercial vessels.

**Both ocean and coastal tankers.

The following figures provided by the Dominion Bureau of Statistics concerning cargo handled in the Port of Saint John (2,000 lbs. to the ton) are also informative regarding its comparative importance as a national port. Similar information is quoted for the most important Canadian ports, e.g., Halifax, p. 192.

Year	Foreign Cargo Handled (Tons)	Coastwise Cargo Handled (Tons)
1959.....	1,877,218	549,994
1960.....	3,345,549	1,108,359
1961.....	3,826,890	1,391,022
1962.....	3,336,280	1,271,218
1963.....	3,955,535	1,299,012
1964.....	4,206,562	1,626,569
1965.....	4,220,155	1,597,706
1966.....	4,517,427	1,462,365
1967.....	4,155,915	1,433,826

SOURCE OF INFORMATION: EX. 1483.

Saint John has experienced the trend to larger ships but has not benefited appreciably from the general increase in maritime activities in contrast to most ports of national importance. During the period 1959-1967 the total number of ships over 250 NRT has steadily decreased (-13.79%) but the aggregate tonnage has substantially increased (43.1%).

The physical restrictions of Saint John Harbour, especially in Courtenay Bay, and its approach channel and the added difficulties created by the tides, cross-currents and the freshet are gradually making it inaccessible to large modern ocean-going vessels unless extensive, costly improvements are made (vide yearly cost of dredging, p. 59, and the suggestions of the Commission's Nautical Adviser p. 65). These factors have prompted the Government of New Brunswick and the Irving interests to look for an alternative site to accommodate larger vessels. Both have recently announced their choice for such a site as Lorneville which lies inside the Pilotage District limits eight miles west of Saint John. It is reported that the site of the proposed "superport" has a depth of 100 feet of water, an unobstructed sea approach, sufficient manoeuvring room for the largest ships and a low current velocity. It is also ice free.

2. NATURE OF PILOTAGE SERVICE

The numerous difficulties and hazards encountered in these confined waters as well as the changing conditions caused by tides and cross-currents make local knowledge and experience a prerequisite to navigation in the District. Except for the Saint John-Digby C.P.R. ferry, almost all ships

that are not small regular traders employ pilots, whether or not they enjoy an exemption from compulsory payment, and only the occasional small exempt ship does not use their services.

Figures supplied by the Dominion Bureau of Statistics on arrivals in Saint John Harbour of vessels of 250 NRT and over, and the Pilotage Authority's annual reports (Ex. 45) are the basis of the following comparative table which indicates the extent of the use made of the pilotage service in the District. The D.B.S. figures include the arrival of the ferry vessel which plies on a daily schedule between Digby and Saint John. The ferry service was provided up to 1963 by the *Princess Helene* (2022 NRT) and is now provided by the *Princess of Acadia* (3409 NRT).

Year	Total Number of Vessels over 250 NRT*	Number of Vessels Employing Pilots**	% of Vessels Piloted	Total Tonnage of Vessels over 250 NRT*	NRT Piloted**	% of NRT Piloted
1959.....	2,466	1,377	55.8	5,557,822	4,087,580	73.6
1960.....	2,430	1,562	64.3	7,232,250	5,701,155	78.8
1961.....	2,256	1,576	69.9	7,005,766	6,134,417	87.6
1962.....	2,520	1,499	59.5	7,031,788	5,759,618	81.9
1963.....	2,306	1,411	61.2	7,559,672	5,955,316	78.8
1964.....	2,408	1,417	58.8	8,379,052	5,925,320	70.7
1965.....	2,290	1,447	63.2	8,044,736	5,975,187	74.3
1966.....	2,336	1,456†	62.3	8,620,184	6,279,218‡	72.8
1967.....	2,126	1,286†	60.5	7,955,326	5,615,121‡	70.6

*Ex. 1483 (D.B.S. Statistics—*Arrivals and Net Registered Tons* multiplied by 2 for total vessels in and out).

**Ex. 45 (Annual Report, *inward and outward* totalled).

†Includes two trips from Saint John to Dorchester Cape.

‡Includes tonnage of pilotage at Dorchester Cape

This table indicates, *inter alia*:

- Except for the ferry and some small ships, all others take pilots.
- The trend is to larger vessels. While in 1967 the number piloted is below the 1959 total by 6.6 per cent, the aggregate tonnage piloted increased by 37.4 per cent; the average NRT per ship piloted rose from 2,968 NRT in 1959 to 4,366 NRT in 1967, an increase of 47.1 per cent.
- However, the port does not benefit from the general increase in the number of ships; in fact, their number is slowly decreasing.

Non-exempt ships very rarely dispense with the services of a pilot—the highest number in any year was four ships in 1963 and 1966. The earnings from this source are negligible, e.g., 0.3% of the District gross earnings in 1965. In 1966 and 1967, 4 and 3 non-exempt ships dispensed with the

services of pilots. Although all were ocean cargo vessels or ocean tankers and not regular callers, they were all of small size and the aggregate amount they paid for those respective years was \$264 and \$341.85 (Ex. 1308).

3. ORGANIZATION

Because the federal Minister of Transport is the Pilotage Authority, administrative direction comes from Ottawa through his local representative.⁴

As in other Districts, an Advisory Committee composed of representatives of the pilots and the shipping interests was set up under the chairmanship of the Supervisor of Pilots but is no longer functioning.

In accordance with the By-law, a Pilots' Committee of three is appointed annually. The need for this Committee is not as great as in some other Districts because there are only a small number of pilots but it serves a useful purpose by enabling the official spokesmen of the pilots to be appointed.

According to the General By-law, the Supervisor has the same responsibilities as the Supervisors and Superintendents of Pilots in the other Districts where the Minister is the Pilotage Authority but in reality his responsibilities are limited merely to clerical work. He purportedly has the direction of the pilots whom he is supposed to despatch normally following a tour de rôle procedure, but in practice he does not perform this function (p. 81). The direction of the service is in the hands of the pilots themselves while the Supervisor is restricted to clerical work, attends to the financial administration of the District, collects the dues, keeps the Pilotage Fund, effects the necessary expenditures and shares the remainder of the pooled revenue among the pilots (p. 128). The By-law does not give him any personal power of discipline but when a "penalty" is imposed on a pilot, he is authorized to pay it from the money accruing to the pilot concerned or to suspend the pilot's licence until the penalty is paid. (As to legality of the Pilotage Authority's disciplinary powers, vide Part I, pp. 373 and ff.)

Although this is not indicated in the General By-law, it is his responsibility as the local representative of the Authority to co-ordinate the pilotage service. He is also expected to keep in touch with the local shipping interests with a view to settling any local problems and, if this can not be done, to report, in due course, to his superiors in Ottawa before an *impasse* is reached. For instance, the argument between shipping interests and pilots

⁴ Until Oct. 1, 1967, this was the Supervisor of Pilots who from 1964 also carried out the D.O.T. function of Shipping Master. When the District Supervisor's position was abolished, a Regional Supervisor of Pilots was appointed for the Maritime Provinces and a Pilotage Administrative Officer was put in charge at Saint John to carry out the functions of the Supervisor.

about tugs should not have been allowed to become as heated as it was when the Commission sat in Saint John in 1963. At the June, 1964, hearing in Ottawa, Captain F. S. Slocombe stated that the pilotage officials in Ottawa were not aware of this problem until it was revealed to them at the Commission's hearings. He regretted that the situation had been allowed to reach such a stage, adding that if they had known the true situation they would have long since tried to bring the interested parties together.

Relations between the Supervisor and the pilots are quite informal; there are few written orders, most instructions are given verbally and decisions are taken after problems have been discussed and decided among themselves. These arrangements work satisfactorily and efficiently except when there is a conflict between the shipping interests and the pilots.

4. PILOTS

(1) RECRUITING AND QUALIFICATIONS OF PILOTS

Secs. 11 to 14 inclusive of the By-law, provide the prerequisites for candidates and the examination procedure, and stipulate that the first licence issued is probationary for one year (vide Part I, pp. 269-270). Sec. 4 provides that the number of pilots is to be determined by the Authority after consultation with the Pilots' Committee.

The By-law, however, does not specify how applications are to be invited. The local practice has been to place an advertisement in the local papers whenever a vacancy occurs or is expected to occur provided there are no accepted candidates on the eligible list. Such an advertisement in October, 1962, brought forward six candidates of whom only one, Captain B. G. Bouthillier, was successful. Since the complement of pilots was not being increased, Captain Bouthillier was not licensed until a vacancy was created by a retirement in 1964. In 1965, a similar advertisement produced eight applicants. Two were found qualified and their names were placed on the eligible list. However, up to July 1968 they had not been licensed because no vacancies occurred. When a pilot retired on December 31, 1965, the Pilotage Authority decided not to replace him, thereby reducing the establishment to eight (vide p. 75). On August 14, 1968, the Pilotage Authority informed the Commission that the eligible list has since been cancelled (Ex. 1530(d)). Therefore, each time it is decided to appoint a new pilot, a new examination will have to be held.

Since there is no longer an apprenticeship system in the District, a candidate must acquire local knowledge on his own initiative. This knowledge is guaranteed by subsec. 11(d) of the By-law which requires at least two

years of service as Master or deck officer in vessels trading regularly into the District in the five years immediately preceding the date of the examination. Each candidate's local knowledge is assessed during his examination and his skill in local navigation and shiphandling is appraised during his probationary year.

The examination procedure is not set out in the By-law and, in practice, part of the function of the Board of Examiners is performed by Ottawa headquarters officials and the Supervisor. When an examination is to be held, the Supervisor of Pilots convenes the Board of Examiners, composed as stipulated in sec. 12 of the By-law. The examination is both written and oral; only the oral examination is held by the Board of Examiners. The Board has nothing to do with the preparation of the questions for the written test; half of them are prepared by pilotage officials in Ottawa and half by the Supervisor in co-operation with the Pilots' Committee. If the candidate is successful in the written examination, he then appears before the Board for oral questions about his background and his local and general knowledge. A medical examination is conducted by a medical officer of the Department of National Health and Welfare who also tests him for eyesight and hearing as prescribed in the "Master and Mates of Home-Trade, Inland and Minor Waters Vessels Examination Regulations".

The first pilot's licence is a probationary one issued to the successful candidate who is first on the eligible list when a vacancy occurs. Sec. 14 limits its duration to one year but also entitles the holder to a permanent licence on proof of satisfactory service. Subsec. 14(4) provides for limiting the earning capacity of a probationary pilot by administrative order by stipulating that he "shall receive compensation in an amount to be fixed by the Authority after consultation with the Pilots' Committee". It is the custom in Saint John to pay a probationary pilot two thirds of the remuneration of a licensed pilot for the first six months and three quarters for the second six months.

Although not provided for in the By-law, a probationary licence is in practice also limited as to capacity by administrative order of the Supervisor under the general provision of subsec. 17(1) which purports to give the Supervisor despatching authority which he may exercise at his discretion. The practice at Saint John is to limit a probationary pilot for the first six months to vessels of less than 3,000 NRT, and he is made to perform as many assignments as he can possibly undertake in order to gain experience. Hence, compared to the full-fledged pilots his workload is far greater (vide p. 112) but he gains much experience in his first few months and the Supervisor and the pilots have ample opportunity to assess his skill and practical knowledge.

These administrative decisions, which are all illegal under the present legislation (Part I, pp. 255, 262, 263 and 269) are contained in a general "Memorandum to Pilots". The one issued when a probationary licence was granted to Pilot A. C. Vallis on October 16, 1961, reads as follows (Ex. 56).

"MEMORANDUM TO PILOTS

October 16/61

Mr. A. C. Vallis has been granted a licence as Probationary Pilot in this District and will commence his duties on October 16th, 1961.

For the first six (6) months he is limited to piloting vessels of less than 3,000 N.R.T. and will be paid at the rate of two-thirds that of a regular pilot.

He is assigned to Watch No. 2 with Pilots Abrams and Merriam, but will also be available to pilot smaller vessels which may arrive, depart or move during duty periods of other watches.

The co-operation of all pilots in assisting Mr. Vallis in attaining the skill they all presently have is earnestly requested and expected.

J. A. MacKinnon,
District Supervisor of Pilots."

The apprenticeship system was abolished when the General By-law now in force was confirmed on November 30, 1961. Up to that time, apprenticeship was only one way to become a pilot, because from time to time pilots were recruited from qualified and experienced mariners. The apprenticeship system was abolished because the Ottawa pilotage officials feel that the best system is still to recruit pilots from experienced Masters who have been trading regularly into the District and it is only when mariners of this type are no longer available in sufficient numbers to make a satisfactory selection that apprenticeship should be resorted to (Part 1, p. 252). As far as the Saint John District is concerned, the Pilotage Authority is of the opinion that the potential recruiting field may be narrowing but this has not yet posed a problem. However, the source of supply was almost exhausted in 1963 since the only large home-trade vessels calling frequently at Saint John were the ferry and the Imperial Oil tankers whose Masters were all over the age limit prescribed for pilots. There were no coastal vessels over 150 gross tons with a certificated Master operating regularly in and out of Saint John and ocean-going vessels seldom called more frequently than two or three times a year. Although the Authority was able to recruit two eligible candidates in 1964, it may become necessary to revert to apprenticeship in the near future if this trend continues.

COMMENT

The degree of difficulty of navigation in Saint John varies according to the section of the harbour involved, the state of the tide, the extent of the discharge of the Saint John River, the prevailing weather conditions and the size of ships. At times, one or a combination of these factors may

become an absolute restriction for a given ship, but, in most cases, the difficulties of navigation and manoeuvring are merely increased. Whether a proposed movement can be made without undue delay depends upon the degree of competence of the pilot to whom the assignment has been given in accordance with the prevailing despatching system. This system, which is based on the false assumption that all pilots, including probationers after their first six months, are equally competent, was bound to have a serious effect on the efficiency of the service and the situation becomes more critical as the size of vessels constantly increases. The Commission's comments regarding the adequacy of the training system will appear later when the complaints of the shipping interests about despatching and the efficiency of the service are studied (p. 85).

(2) PILOTS' ESTABLISHMENT

The By-law provides that the number of pilots is to be determined by the Pilotage Authority after consultation with the Pilots' Committee (re legality, vide Part I, pp. 255 and ff.). Here, as in the other Districts, the pilots' establishment is always a source of contention on account of the direct bearing of the number of pilots upon working conditions, workload and the individual pilot's remuneration. The pilots' strength, which was ten in 1958, had been reduced to eight in 1959 as the result of the cancellation of a licence by the Pilotage Authority and a voluntary resignation. The efforts of the Pilots' Committee to have the number brought up to ten were not successful in 1960 and only partly in 1961 when the number was raised to nine. It remained at nine up to the end of 1965, but fell again to eight in 1966 and 1967 when a pilot retired December 31, 1965, and against the pilots' protest (Ex. 1460(gg)) the Pilotage Authority decided not to replace him.

At the time of the Commission's hearings in 1963, the pilots were pressing the Pilotage Authority to appoint a tenth pilot. As they had had no success with the Pilotage Authority, they raised the question before this Commission. Their argument was not based on an attempt to improve their working conditions but to anticipate future developments. Two vacancies were expected in the near future, although neither of the pilots concerned was near the age limit. Their forecast proved correct, both pilots retired prematurely, one in 1964 at the age of 68 and the other in 1965 at the age of 65. The pilots were of the opinion that on account of the scarcity of qualified candidates, no risk should be run of losing Captain B. G. Bouthillier, the successful candidate in the 1962 examination, who was on the eligible list pending a vacancy and was still available. They added that, despite his

qualifications, Captain Bouthillier would not be able to handle large crude oil tankers and would need a great deal of experience even after completing the probationary year. If he were taken on immediately, his training would be completed when a vacancy occurred. Moreover, they agreed not to ask for a general increase in pilotage dues for three years if their request was granted.

On the other hand, they felt that there was no logic in the Pilotage Authority's decision to refuse the appointment, observing that in 1946 and 1947 they had 13 pilots performing as few as 122 and 134 assignments each compared with 8.25 pilots doing 233.3 assignments each in 1961 and nine pilots doing 189.6 assignments each in 1962. They also felt that the Department of Transport had made an incorrect appraisal of their workload because, although some allowance was given for travelling time, no allowance was made for time spent in the pilot office on traffic control duties. (Workload is studied later.)

This request had first been presented informally to the Authority in Ottawa in September, 1962, by Pilot R. V. Cobham during a visit to Ottawa on other business. The Authority instructed its Supervisor to sound out the local shipping agents on the matter. They voiced no objection, provided there was no increase in tariff.

The Authority then informed the Shipping Federation of Canada who strongly protested because they felt that the low average workload of the existing staff of pilots did not warrant the increase. On account of its reliance on average statistical figures, the Department felt bound to agree with this view. Captain F. S. Slocombe went to Saint John to investigate and found that the reasons put forward by the pilots were not very convincing. On December 28, 1962, the Minister, as Pilotage Authority, wrote to the Chairman of the Pilots' Committee (Ex. 1153), refusing their request on the ground that the actual volume of work did not warrant the increase of one pilot and the workload could easily be distributed in case one pilot retired and a replacement was not immediately available. He pointed out that the record of that year showed that the Chairman of the Pilots' Committee had been far from overworked in that he had performed no pilotage service during 15 days in January, 8 in February, 10 in March, 22 in April, 25 in May, 22 in June, 21 in July, 22 in August, 22 in September, 21 in October and 20 in November and that, for all the pilots, the daily average for the busiest month, i.e., February, was 4.4 hours in which was included "a generous average allowance of one hour for every job to cover time spent in the pilot boat proceeding to or from a ship".

COMMENTS

The events of the following years proved that what the pilots feared did not occur and that the Pilotage Authority's decision was right, so much so that the establishment has been reduced to eight since 1966.

The opportunity to obtain the services of Captain Bouthillier was not lost; he was still available in 1964 when there was a vacancy. Neither was the source of recruiting pilots exhausted as was shown by the 1965 examination which produced two suitable, qualified candidates who were on the eligible list until it was cancelled.

It is true that the Department of Transport's statistics do not cover specifically time spent on assignments that are cancelled due to stress of weather, nor the time spent at the pilot station on traffic control or arranging movements, nor is the average workload, particularly in Saint John, the proper criterion for appraising the actual working conditions of pilots. But even if these statistics had included these factors, such average figures would not be pertinent to the solution of this problem (Part I, p. 148). The number of pilots on strength is essentially a local matter and there are no two Pilotage Districts where all the governing factors are the same. Pilotage is a service and, therefore, there must be sufficient pilots to provide an efficient service in the local circumstances. In Saint John, the real criterion is ability to meet the demand at expected peak periods of a certain duration, taking into consideration the restrictions placed on navigation by the tidal conditions and other features and peculiarities of the harbour. However, the aim should not be to create an ideal situation which guarantees that no ship will ever be delayed for lack of a pilot, even during an unexpected brief peak. In a predominantly seasonal harbour like Saint John, this would lead to overstaffing with consequent adverse effects on the cost of the service and the pilots' level of remuneration as well as reduced competence as a result of less experience (Part I, p. 258).

The request did not meet that criterion. Furthermore, in view of the effect of a strength increase on the pilots' share in the pool, the Pilotage Authority ought not to allow an increase unless it is reasonably satisfied that the level reached in the pilots' workload in the current year will at least be maintained. In the years that followed, pilotage never again reached the peak of the years 1960 and 1961 and for no special reason decreased markedly in 1967. The refusal to appoint a tenth pilot has helped maintain the pilots' "take-home pay" at a satisfactory level, despite the decrease in pilotage, a fact that the pilots have since recognized (*vide Saint John Pilots' Supplementary Brief in 1965, Ex. 39*). Again, the decision not to fill the vacancy in 1966 was the main factor which accounted for the 14.9 per cent increase in the pilots' "take-home pay" that year, and caused the individual pilot's remuneration to remain at a satisfactory level despite the substantial decrease in pilotage earnings in 1967 (*vide graph Appendix B*).

(3) SHIPPING CASUALTIES, INVESTIGATIONS REAPPRAISAL AND DISCIPLINE

Despite the many adverse navigational conditions which frequently prevail, the safety record of the Saint John pilots is highly commendable.

For the period 1958-1967 there was a total of 19 so-called shipping casualties in which a pilot was involved, all of a minor character. None was found by the Minister of Transport serious enough to warrant the holding of a Preliminary Inquiry or of any other investigation under Part VIII of the Act, although in one case the pilot was reprimanded by the Pilotage Authority.

Appendix C is a comprehensive table and brief summary of these 19 shipping casualties and incidents. They are grouped following the method described in Part II of the Report, pp. 89 and 90.

As is to be expected in the prevailing current and tidal conditions, most cases occurred while berthing or unberthing.

There have been very few cases of disciplinary action against pilots. Captain J. A. MacKinnon stated that since June 1, 1949, when he was appointed District Supervisor of Pilots there had been only three cases of disciplinary action:

- (a) Early in his appointment, a chronic alcoholic had to be discharged after numerous fines and suspensions.
- (b) In 1959, a pilot was dismissed for neglect of duty and unsuitability.
- (c) In 1962, a pilot was suspended for two weeks for intoxication.

Casualty Report (Ex. 60) shows that a pilot was reprimanded following the grounding of the *Irvinglake* on Navy Island on January 25, 1961. Since 1962 there has been no case of disciplinary action (Ex. 1530(j)).

5. PILOTAGE OPERATIONS

(1) PILOT STATION

The Department of Transport has provided the pilots with accommodation on the second floor of the National Harbours Board Building, Reed's Point, consisting of a waiting room and an office equipped with a radiotelephone, a despatching board and a land telephone. The Supervisor's office with its own telephone is located across the hall.

When the Department assumed responsibility for the pilot vessel in 1959, it also became responsible for the pilot station and since that time has paid the rent, the upkeep of the accommodation and the cost of equipment including the telephone. Only a verbal gentleman's agreement covers the pilot station and its equipment.

(2) BOARDING AREA

Incoming vessels are met by the pilot vessel about a mile beyond the Fairway buoy, i.e., approximately a mile and a half south of Partridge Island. The pilots pointed out that the "Nova Scotia (S.E. Coast) and Bay of Fundy Pilot, Third Edition, 1960" is incorrect in its statement on page 274 that "the pilot vessel will meet ships between the Fairway buoy and the harbour limits". The Fourth Edition, 1966 page 272 now states, "The pilot vessel will meet ships between the Fairway buoy and the pilotage district limits, south of Partridge Island".

At times, the pilots embark much farther to seaward when more sea room is needed because of wind and weather or the type of vessel concerned, e.g., when a ship enters light with a following wind; when large heavily laden ships, particularly tankers, are involved; and when the Master is not acquainted with Saint John and, hence, wishes time to be briefed on local conditions before entering the harbour.

(3) PILOT VESSEL SERVICE

Pilot vessel service is provided by *Canada Pilot No. 8*, owned by the Department of Transport. This vessel, originally *Pilot Boat No. 6*, was specially built for service at Saint John. It went into operation in 1959 replacing *M. V. Mauvais* which was operated under charter pending delivery of the new vessel. It is a sturdy single screw diesel vessel, 90 feet in length with a beam of 22 feet, 106 tons gross, 41 tons net.

The pilots consider that the present pilot vessel is satisfactory because it is heavy enough and has sufficient length and beam to operate effectively in the heavy seas that can prevail off Partridge Island. This vessel is similar to the former craft which the pilots had provided themselves. The Department of Transport had suggested a vessel like those in use at Les Escoumains but when one was tried in Saint John both the pilots and the Supervisor found it unsuitable.

The pilot vessel is equipped with radio telephone, AM and FM radio and radar. The pilots' request for an echo sounding device was at first refused by the Department but later granted. In 1963, she was equipped with an echo sounder (a Raytheon Model DE 718A) whose performance is reported to be satisfactory (Ex. 1460 (jj)). Despite the poor opinion they had of the usefulness of the echo sounder, due to the nature of the bottom of the harbour (p. 66) the pilots wanted one available to enable them to carry out their own soundings in case of emergency, or when otherwise required. The pilots' experience with radar in the pilot vessel has been unsatisfactory, e.g., it was stated that Partridge Island did not show up well on the screen and that everything appeared on the wrong side. However, these errors were due to faulty maintenance because performance improved when a competent technician adjusted the set.

During periods of refit or repair, service is provided either by a pilot vessel from another District or a vessel on local loan from another government agency.

In 1920, the Minister of Marine and Fisheries became the Pilotage Authority and acquired title of the pilot vessels from the pilots. The vessels were maintained out of District funds, the pilots operated them and took command in turn, which was considered to be part of their duties as pilots (vide p. 48).

In 1950, the Department of Transport assumed all pilot vessel expenses and met them out of a special parliamentary appropriation. At first, these expenses continued to be paid out of the Pilotage Fund and were reimbursed monthly by the Department. Since the existing By-law required that the Pilotage Fund had to be closed at the end of each year, provision could not be made for depreciation. The Department solved the problem by granting to the Saint John District Pilotage Fund interest free loans for new purchases. When manning the pilot vessels the pilots were not employees of the Government, although they were in charge of Government property. The situation was that the pilot vessels were loaned to them without charge for them to use and operate.

In 1959, it was thought that the pilots' status was anomalous, although the system worked well. Authority was obtained for the Department of Transport to pay the costs directly and arrange to have the vessels manned by Government employees.

Since then, the pilots use the pilot vessel only as passengers, having no food or quarters on board. This change of policy increased the cost to the Government considerably because, under the Ships Officers' Regulations and Ships Crews' Regulations, the Department had to provide three separate crews to comply with the limitation of working hours, and thus make the pilot vessel available at any time during the day and night.

Apart from looking after the pilot boat and transporting the pilots, these crews have little to do during most of the year, except for the peak winter periods when traffic increases and adverse weather prevails. The crews' wages plus the maintenance and operating costs of the pilot vessel are the main reasons why Saint John pilotage service is so costly to operate. The cost to the Government of operating the pilot vessel and station increased from \$38,201.14 in 1958 and \$37,746.11 in 1959, to \$77,819.34 in 1962. In 1967, the pilot vessel maintenance and operating costs (not counting depreciation) had risen to \$100,008.93 of which \$81,807.39 was for crews' wages alone (Ex. 45). It is pertinent to note here that it cost almost as much in wages for the pilot vessel operation as to remunerate the Saint John pilots: the aggregate crews' wages amounted that year to 79.3% of the aggregate pilots' "take home pay".

The pilot boat charge, which is currently \$10, returned \$12,810 in 1967, leaving an operational deficit (not counting depreciation on the pilot vessel and its equipment) for the pilot vessel service alone of \$87,198.93 which is absorbed by the Government. This indirect subsidy has been provided so far in order to ensure the pilots adequate remuneration without increasing pilotage dues. (For total cost to the Government for the years 1961 to 1965, vide Part I, pp. 639 to 641.)

PILOT VESSEL DISASTERS

The pilotage service organization which existed prior to 1920 forced the pilots to spend most of their time on board the pilot vessels of which, as required by the By-law, they were co-owners. The pilot vessels had to keep cruising in the extensive open waters of the boarding "districts", a practice that was fraught with danger in periods of stormy weather and low visibility. This situation was greatly improved with the creation of a precise, restricted boarding area as recommended by the Robb Commission but there still remained the danger of a collision or accident with grave consequences, because a number of pilots were always on board.

During the course of the Commission's hearings, mention was made of the loss of three pilot vessels in the District and in two of them the death by drowning of a number of pilots.

The pilot vessel *John Mullin* was owned jointly by a number of pilots as required by the By-law in force at the time. The casualty occurred around 1891. The vessel had left Saint John on her maiden voyage to cruise throughout the boarding districts and ran into a heavy storm. No one knows exactly what happened but it was believed that she ran aground off Brier Island, Nova Scotia, and was lost there. At least six pilots who were on board were drowned (Ex. 1530(c)).

About 1918, the pilot schooner *Howard D. Troop* was lost in a collision with the steamship *Canadian Voyager*. The pilot schooner, which was on the lee side of the steamship while disembarking the pilot, collided with her and sank, but there was no loss of life or personal injury (Ex. 1530(a)).

On January 14, 1957, *Pilot Boat No. 1* was lost following a collision with the S.S. *Fort Avalon*. Three pilots, one of whom was acting as Master, and four crew members were on board. There were no survivors. The pilot vessel was on station waiting to transfer a pilot when the collision occurred. The weather was very cold at the time with zero visibility caused by dense vapour rising from the surface of the sea. Since there were no survivors, the Commission charged with the subsequent investigation was unable to establish exactly what happened on board the pilot vessel or the cause of the collision but the Court of Investigation held that the Master of the *Fort Avalon* was at fault for not reducing speed under the circumstances. Both vessels were

equipped with radar but apparently the *Fort Avalon's* radar was defective (Ex. 1530(a)).

(4) DESPATCHING

According to sec. 10 of the By-law "Notices of Requirement of Pilots" must be addressed to the Supervisor who then arranges despatching according to a tour de rôle except when he decides otherwise because of special circumstances (sec. 17). The practice, however, does not correspond to these regulations which are stereotyped provisions that appear almost verbatim in the General By-laws of all Districts where services are made available under the direct control of the Authority. In Saint John, these provisions are not implemented and it does not appear that it was ever intended to apply them, with the result that the practice being followed is without legal foundation. This is a further example of regulations being drafted by officials who are not on location and are not fully conversant with local customs and requirements. This situation should be corrected. The regulations should be made to agree with the practice being followed either by altering the regulations, if the practice must be retained, or conversely, by changing the procedure. The system in force is partly a relic from the past and partly required by local exigencies. What is based merely on custom might well be changed to effect improvements, but whatever meets local requirements should be retained and ratified by regulation.

Neither the District Supervisor nor his clerical staff performs any despatching duties; the pilots themselves make all assignments. The Supervisor divides the pilots into two watches: if the establishment of pilots is an odd number, the odd man changes watch monthly. One watch takes inward assignments one week and outward assignments the following week. In 1963, with a pilot strength of nine, the watches consisted of four and five pilots, but now they are four pilots each. During the summer when there is less traffic the pilots are divided into three watches: inward, outward and stand by.

One pilot is put in charge of the inward watch each day of the week for 24 hours commencing at 9 a.m. As duty pilot, he is responsible for coordinating pilotage assignments for that day and all pertinent calls are referred to him. It is his responsibility to perform inward assignments as they occur and it is only when assignments overlap that he may call on another pilot of the inward watch for assistance. Even if there were as many as five inward assignments during the period, the duty pilot would take them all, provided they were well spread out.

The outward watch, however, operates on the roster system because sailing times are known in advance. The duty pilot is responsible for keeping the other pilots informed about pilotage requirements. When other pilots are not performing pilotage they are on call and they must keep the duty pilot informed of their whereabouts.

In accordance with long established custom, requests for pilotage service are made directly by agents to the pilots, with the exception of the Saint John Dry Dock representatives who always place their requests through the Supervisor as required in the By-law.

PLANNING AND CO-ORDINATION

The movements of ships in the harbour must be planned and co-ordinated because the times when navigation is best undertaken vary from day to day with the tides, winds, weather conditions and river levels. Each assignment has to be appraised individually; some assignments can be carried out safely at any time while some, because of the size of the ship, the berth or various other reasons, are limited to certain brief periods generally during daylight hours.

This planning and co-ordination of ships' movements is not traffic control in the ordinary sense of the term but is an aspect of pilotage activities. It occurs in harbours where the movements of ships are limited by changing navigational conditions: some are well known in advance but others must be evaluated as they occur. Such planning requires extensive local knowledge of all the factors involved, knowledge which is part of the pilots' *expertise* and a responsibility which they have always accepted.

Large crude oil tankers are not handled at night but only during daylight and at high tide. Serious operating delays are caused by this restriction, especially during the winter. This explains why in their planning the pilots give priority to these vessels when conditions are suitable and delay other assignments if necessary. The pilots maintain that they take such decisions with the approval of the shipping agents.

The agents and others connected with shipping are accustomed to having the pilots co-ordinate ships' movements and, hence, they consider it normal to speak directly to them on the subject. By following this practice many unnecessary delays are saved by direct action. It was argued that a traffic controller would have to be an experienced pilot: otherwise, he would be forced to seek expert advice from the pilots because the determining factors for the movement of ships are the pilotage conditions which only the pilots can assess. The Commission was told that, apart from the pilots, no other person with the necessary training and experience in Saint John is available for this position.

Since only the pilots know exactly in which order and at what time pilotage assignments will be carried out, the agents have to call them to make detailed arrangements and, as a matter of convenience, the practice has now developed of asking the pilots to arrange for tugs, boatmen and line handling, although their decisions have occasionally been a source of contention. A number of tugs of specified horse power, together with boatmen to take lines ashore and linesmen to secure them, are usually required to berth a ship,

depending on her type and the prevailing conditions. Careful planning and co-ordination are required to ensure that the best use is made of the tugs and labour available.

The practice has also developed that the pilots provide information about expected ships' movements to all enquirers, such as laundrymen, doctors, agents and linesmen. The pilots consider this is an indirect service to the shipping industry because it avoids delays, especially during the winter. An incomplete log kept by the pilots for the 29 days from January 14 to February 11, 1963, shows 13 days with fewer than ten calls, 10 days with ten to twenty calls, and six days when over twenty calls were received, mostly during the day time (Ex. 40).

In Saint John, the Harbour Master's principal duty is to allocate berths. He decides which berth will be more suitable for a given ship after he has been notified of her arrival by the agent and has considered the circumstances. He leaves to the pilots the decision as to the time a ship should enter the harbour, and he would not allocate a priority except in an emergency. While the Harbour Master is concerned that time should not be lost, he considers that, because of the tides and other local conditions, the timing and co-ordination of pilotage assignments are responsibilities of the pilots and, hence, outside his duties.

Occasionally a shipping agent complains that a tide has been missed or that there has been discrimination but the Harbour Master considers that it is beyond his jurisdiction to say which ship should enter the harbour at a given stage of the tide.

The pilots stated that there is no overlapping and that they and the Harbour Master work together and correlate their operations.

This planning under the present system is the joint effort of all the pilots who at any given moment are responsible for each ship's movements taking place, or about to take place, in the District. It is the responsibility of the duty pilot to receive all pilotage requests and queries, and to attend to the land telephone and radiotelephone at the pilot station. If requests and queries deal with assignments for which he is not responsible, such as outward assignments and movages, it is his duty to refer them to the assigned pilot who has the responsibility for planning the movement of the ship(s) concerned and making the necessary decisions.

Because the duty pilot also performs assignments, i.e., all the inward movements he can handle, the pilot station is often left unmanned with the result that the radiotelephone is left unattended and the land telephone calls are taken by the telephone answering service and dealt with by the duty pilot on his return. Although the seven pilots are never all on duty at the same time, there is no official arrangement for relief for the duty pilot during the period(s) he is absent from the pilot station. If another pilot happens to be in the vicinity, or the Supervisor (whose office is across the hall) hears the

telephone ring, one of them answers and replies to the best of his knowledge or arranges to convey the information or the request to the pilot concerned.

Furthermore, the duty pilot does not make a decision on the movement of a ship unless she has become his responsibility. The final decision always remains with the pilot to whom the assignment is given. This practice sometimes leads to a conflict of opinions and procedure.

PILOTS' VIEWS ON DESPATCHING PROCEDURE

Pilot F.M. Quinn stated his opinion that all the Saint John pilots, except those newly licensed, are competent to undertake all local assignments and a difference of opinion arises only during the freshet or adverse weather conditions. Acknowledging the fact that a newly licensed pilot is not as capable as one with long experience, he added that the pilots see to it that a new pilot does not get an assignment which he can not handle, and that, if an assignment appears too difficult, an older pilot will take it for him. He added that, if a pilot is willing to handle a ship in difficult circumstances, the Supervisor has authority to assign him but he does not think this should be the practice because it would cause friction among the pilots. He agreed there have been such assignments but only by arrangement among themselves.

However, the newly licensed pilot, A.C. Vallis, stated that the reason why he had never piloted a crude oil tanker into Courtenay Bay during the freshet period was because such an assignment had never coincided with his tour of duty.

Pilot Ronald V. Cobham went even further by saying that, on account of his long experience in handling ships in this port, he sometimes "deviates clear of the rest of the pilots" in regard to movements; he may go earlier or later with a ship because he has known some of the ships for years and is acquainted with their peculiarities. Weather conditions permitting, he will not go by the local rule of two hours before and after high tide. Whether it is considered safe to pilot a ship in or out depends on the experience of the pilot: "There are no two who have the same opinion as regards to handling a ship. I am sure, when I was a young pilot, I did the same as the young pilots are doing today . . . I may go later, I may go earlier than other pilots. I think it shows the experience here".

He stated that with regard to movement control duties, he goes to the pilot station practically every day; it is second nature for him to see if somebody is attending the telephone and, if not, he answers it himself.

SUPERVISOR OF PILOTS' OPINION ABOUT DESPATCHING

The Supervisor stated that the movement control system is working satisfactorily, and what little adverse comment exists is related to the absence of pilots when calls are taken by the telephone answering service. Over a period of time all the pilots call at the pilot station, some to a much greater

extent than others. When no pilot is in the office, he himself usually answers the telephone or radiotelephone. In most cases, he can inform the agents the time ships will berth or move, since he has a fairly reasonable idea of just when the pilots will act. In extreme cases, he does not commit himself but consults a pilot. However, 75 to 80 per cent of the time the calls are so-called "nuisance calls".

SHIPPING COMPLAINTS ABOUT DESPATCHING

The main problem of the shipping interests in Saint John is obtaining advance information about the time an assignment will be carried out. This was one reason for the special pilot system (vide pp. 85 and 86). Because the pilots have different opinions about handling ships, the agents complain that only the pilot who has been given an assignment can inform them when and how it will be performed. He is not always available at the pilot station when the call is made and the opinion held by another pilot, or by the Supervisor, may prove not to be shared by the pilot who will perform the assignment.

Mr. H. E. Kane, speaking for the shipping interests, added that, while it is conceded that a proposed movage might be delayed on account of some unforeseen change in the weather, the shipping interests should not be inconvenienced by a difference of opinion among the pilots as to when an assignment should be handled.

This situation has caused both inconvenience and additional expense because stevedores must be allocated in advance, e.g., the stevedores' day is divided into three periods commencing at 8 a.m., 1 p.m., and 7 p.m. and they have to be ordered by 4.30 a.m., 11.00 a.m. and 4.00 p.m. respectively. An instance was cited of the pilot station providing information that a ship would be moved at 5.00 p.m. and the assigned pilot decided to perform the movage at 7.30 p.m., i.e., during a different stevedoring period.

An arrangement to carry out all movages within the period of two hours before and two hours after high water would not be a complete solution to the problem. Some wharves are accessible at all stages of the tide depending on the draught of the ship but tugboats are not always readily available.

It was suggested that a possible remedy would be greater collaboration between the Saint John Pilotage Authority and the National Harbours Board acting together as a central control agency.

Mr. Kane further suggested that someone should be on duty at the pilot station at all times to deal with emergencies.

SPECIAL PILOTS

The system of assigning special pilots to a company was introduced at the request of the passenger lines which needed to know as far and precisely in advance as possible the time of berthing in order to arrange trains for the passengers.

In all Districts where this system was operative the Pilotage Authority experienced difficulties. The Saint John pilots also found it unsatisfactory mainly for three reasons:

- (i) duty watches could not be set nor could assignments be equalized;
- (ii) professional jealousy was created;
- (iii) the employing companies could influence the selected pilots, thus limiting their freedom to give their considered opinion without fear of compulsion or undue pressure.

The special pilot system was abolished by a letter dated April 22, 1960, from the Minister of Transport to the Chairman of the Saint John Pilots' Committee (Ex. 424). The change was made at the request of the pilots and was effected on the same date in Montreal and Quebec, except that the three separate classes of pilots created for Montreal and Quebec were not adopted at Saint John.

COMMENTS

While it is uncontested that ships' movements must be planned and co-ordinated to ensure efficient operations in Saint John Harbour and that the pilots must perform these functions directly or indirectly, it is considered that the present system could profitably be reorganized to achieve better results.

The present system requires the duty pilot to perform two incompatible functions at the same time: his planning and co-ordination duties require his constant availability at the pilot station but he is also obliged to leave the station during his period of duty to perform all the inward pilotage assignments possible. Such a system is bound to be unsatisfactory unless traffic is so light that no serious inconvenience can be caused. However, the record and the evidence received prove this is not the case, particularly during the winter months.

The watch system no longer serves a useful purpose and should be abandoned. It is a feature inherited from the past when every pilot belonged to a "company" and cruised on station as one of a group in a pilot vessel jointly owned, except when engaged in piloting.

Today there is no reason why the pilots should continue on a watch system or why a general flexible assignment system based on grades, types of assignment and tour de rôle should not be more effective. Furthermore, with the availability of radiotelephone communications there is no reason why inward assignments can not also be known in advance. The practice of one pilot being on continuous duty at the pilot station for 24 hours and also performing all possible inward assignments during the same period is illogical, impairs public relations and is a source of danger because every pilot should be well rested before performing pilotage.

It is considered that planning and co-ordinating pilotage assignments should be the responsibility of an official who is readily available or represented at the pilotage office (re arrangements for constant attendance at the pilotage office, reference is made to the study of this problem in the Halifax District where by contrast the pilotage office appears to be overstaffed, vide pp. 246-248). This official need not be a pilot nor is it necessary for him to be an expert in pilotage. His primary rôle is to co-ordinate the work of the pilots, i.e., to receive requests for pilotage services and to assign each task in advance to the next pilot on roster, provided he is fully qualified to attend to it. From then on, he leaves each pilot to decide when and how the assignment he was given can be safely performed. It would be this official's responsibility to ascertain whether berths are free and that the tugs requested by the pilots are available. When it appears that because of pilots' conflicting requirements some movements can not be performed as individually planned, it would be his responsibility to inform the pilots accordingly and obtain new decisions from them. In case of disagreement on priorities he as co-ordinator should be empowered to decide. In view of the Crown liability in controlled pilotage (Part I, General Recommendation 29) despatching should be performed by a Crown officer. In the discharge of this duty he should be untrammelled by rigid rules or by the pilots' personal interests and susceptibilities but be guided by the superior interests of the service and the state.

The functions of planning and co-ordinating form part of despatching and should be undertaken by the Supervisor of Pilots.

The pilots' main argument in favour of retaining the watch system is their advance knowledge of which pilot will be the duty pilot on a particular day of the week. In a letter dated Nov. 22, 1965, addressed to their Supervisor, the Pilots' Committee stated (Ex. 1460(gg)):

"Under the two-watch system under which a pilot is designated in advance to be primarily responsible for all ships navigating inward or outward on a specified day, shipowners are able to contact the responsible pilot several days in advance and obtain a commitment from the responsible pilot as to the hours within which he will be willing to navigate the vessel. You realize that this is of primary importance in a tidal port where the final decision as to the safe hours of navigation must be made by the responsible pilot and not by someone else. Under the tour-de-role system no one will know in advance what pilot is to be responsible for a given assignment and it will not be possible for these advance commitments to be made."

This statement exaggerates the consequences of the tidal conditions of the port. A difference of opinion among pilots about how and when to perform an assignment should only occur in a particularly difficult case but not regularly. It is also based on too strict a concept of the tour de rôle by which pilots must be assigned automatically with no consideration for the type of assignment and the prevailing conditions. A system of that nature is bound to fail as the trend to larger vessels continues and creates severe adverse effects on both the port and the pilots themselves. As was stated

earlier and will be developed later, the normal procedure should be to plan assignments as far ahead as possible and allocate each one in turn to the next pilot who is qualified for it. If on account of a change in the prevailing conditions an assignment becomes too difficult for the pilot to whom it was first assigned, the despatcher should have the power and the obligation to reassign the ship to a better qualified pilot. Such a system improves on the watch system because it is possible to contact the assigned pilot for a known difficult assignment. The advance choice of the designated pilot is not left to mere chance, as in the watch system or an automatic tour de rôle, but consideration is first given whether he is fully qualified to undertake the assignment.

The proposed flexible assignment system has the marked advantage of not being based on the delusion and fallacy that all pilots are equally skilled for all pilotage tasks that may occur. Therefore, it is bound to enhance both safety and efficiency.

CONTENTIOUS POINTS

In addition to Mr. H. E. Kane's request for better planning or traffic control (B-2, Ex. 60A) there are three points of contention concerning pilotage operations, all between the pilots and the Irving interests:

- (i) the Courtenay Bay problem, i.e., during the freshet or in adverse conditions, the delays incurred piloting large tankers in and, at times, the refusal of the pilots to bring them in;
- (ii) the Reversing Falls navigational problem;
- (iii) the alleged discrimination on the part of the pilots against tugs owned and operated by the Irving interests.

(a) *The Courtenay Bay Problem*

The Irving interests complained that they did not have the full co-operation of the pilots in the piloting of ships destined for their oil wharf at Courtenay Bay.

The bulk oil plant was established in Courtenay Bay in 1930, and the oil refinery came into operation in March, 1960, after arrangements were made by Mr. K. C. Irving with California Standard Oil. Another Irving interest in Courtenay Bay is the shipyard where one of the largest dry docks in Canada is located.

It was stated that the only reason for the choice of Saint John as the site for the refinery was that Mr. K. C. Irving lived there. British Petroleum were willing to build it on a site of their choice, but Standard Oil of California, after a survey of the facilities and an appraisal of the operational costs, agreed to the Saint John location, provided certain improvements were made in the approach channels. They had first thought of building in the main harbour near the sugar refinery, but Courtenay Bay was found to be more suitable for their purposes.

Mr. Irving stated that the pilots were consulted and their advice was followed prior to deciding on the location. Pilot R. V. Cobham was said to have indicated the main harbour as the safest place with Courtenay Bay as a second choice, provided improvements were made by deepening the channel and widening its entrance. Pilot Cobham recalled some discussions, but none regarding the feasibility of bringing tankers into Courtenay Bay during the freshet season.

Pilot F. M. Quinn corroborated Pilot Cobham's statement and added that the first time the pilots gave thought to the possibility of piloting tankers into Courtenay Bay during the freshet season was when they saw dredging in the channel and wondered how the dredges could hold their position against the current. They saw how this was accomplished and with this experience in mind considered how larger ships could be piloted in. For some years prior to 1960 they had had experience with tankers belonging to the Imperial Oil Company which had instructed its Masters to enter Courtenay Bay only during the period between two hours before and two hours after high water. The pilots restricted all their movements to that period until the Irving interests, said Mr. Quinn, "started crowding one way or the other". However, no detailed evidence in this respect was adduced.

When the pilots first learned that it was planned to send "supertankers" into Courtenay Bay they stated their opinion this would be impossible during the freshet period. Only one large tanker had been piloted in successfully under these conditions and she was considered fortunate to have arrived safely, even when partly lightened. This situation, however, was well known to all concerned. The California Shipping Company had commissioned surveys and studies of the currents prior to deciding on the location of the refinery, and knew about its limitations, especially during the freshet period. This was shown by their letter, dated May 8, 1961, to Irving Oil Company Limited, stressing the need for powerful tugs and acknowledging the fact that during the freshet period "at times, it was impossible to bring in large tankers regardless of tugboat availability". All these factors had been taken into consideration and were included in the calculated risk.

Mr. K. C. Irving added that, in order to comply with the requirements of the California Shipping Company, the Courtenay Bay channel was deepened from 16 to 20 feet, and the seaward entrance was widened first to 600 feet, and in 1961 to 800 feet, the company sharing the dredging costs with the Department of Public Works. They also required additional tugboats because the California Shipping Company had found that those available were insufficient, both in number and in power, for large tanker assignments.

Mr. William R. Forsythe, President and General Manager of Irving Refining Limited, stated that crude oil is brought in by modern tankers from the Middle East at a rate of approximately one per week. An unloading period of twenty-four hours is planned for, i.e., from one daylight high tide to the next, but this is not always possible on account of weather conditions

or because the ship does not discharge rapidly enough. Most of the refined products are shipped out in tankers from wharves adjacent to the crude oil wharf in Courtenay Bay.

His only concern was that crude oil was brought in regularly to keep the refinery operating at full capacity. Apparently it is not possible to store crude oil far in advance. A lack of crude oil disrupts refinery operations which not only reduces profits from petroleum products but also makes the whole operation more costly.

Furthermore, when ships are delayed there is demurrage and the extra expense of hiring lighters and tugs (\$150,000 in 1963).

The problem of delays caused a serious disagreement between the oil refinery and the California Shipping Company which was claiming demurrage. It was very difficult to establish who was responsible for the delays: the blame was placed either on the pilot or the Master, depending on who made the report. Mr. Irving expressed the opinion that a pilot should not interfere with a Master's decision by warning him unduly.

Mr. Irving stated that his problem is planning. He noted that, although the freshet season can be foreseen, it can not be avoided and, furthermore, conditions are not always the same. For instance, in 1962, the freshet was not very strong and there were no delays. His complaint was that he could not be given a reasonable berthing forecast of more than a few hours. To this the pilots replied that it was very difficult to give a definite forecast unless conditions were so adverse that even a considerable improvement would not permit them to enter the harbour. They generally delayed their decision until the last minute in the hope that some change for the better would reduce the risk to an acceptable level.

The pilots added that their attitude has always been that a hard and fast rule in a tidal port like Saint John would cause the port to lose business and that it is preferable to consider assignments individually. It was their opinion that they had "bent over backwards" to accommodate ships on the basis of their handling qualities and of the prevailing tidal and weather conditions. Because of their interest in the port they felt that they made every effort to avoid delays and that very few ships were actually held up. In the New Westminster District where a similar problem exists, experience has been that while hard and fast safety rules reduced to writing have the advantage of giving shipping the advance information needed for planning, they have adversely affected the harbour by reducing traffic (vide Part II, pp. 281 and ff.).

Unfortunately, the tankers proceed into an area which the pilots consider relatively more dangerous than any other part of the harbour and the danger is compounded because these tankers are turbine propelled and slow to manoeuvre. Rather than have accidents they advise Masters about the adverse conditions. An accident, especially one involving a large tanker, would block the channel providing access to the bay and the dry dock.

While Mr. W. R. Forsythe conceded that a major accident to a crude oil tanker in Courtenay Bay would have an adverse effect on the refinery and would cause a tremendous loss of earnings, Mr. K. C. Irving, on the other hand, said this was not necessarily so since there is a month's supply of crude oil on hand and the effect on the refinery would vary with the location of the accident.

Pilot R. V. Cobham added that the pilots do whatever they can to co-operate but when it is unsafe they do not carry out an assignment. He had only one experience of piloting a crude oil tanker into Courtenay Bay during the freshet and he claimed that he was very fortunate to have escaped without an accident. The vessel in question was the *A. M. Kemp*, 664 feet long and 85 feet beam. Since he was not worried about the depth of the channel but about negotiating between the currents, he passed the end of the breakwater at full speed (17 knots) to clear the channel. One tug was secured aft but the second tug could not keep up. Pilot Cobham said that it was more by good luck than good management that he managed to stop the tanker in time, and from this experience he considers it is not safe to pilot large tankers, even when lightened, into Courtenay Bay during the freshet.

It was pointed out that crude oil tankers are not as manœverable as tankers such as the *Irvingdale* and the *Irvingglen*; that they have slow stern power, and must not be driven at full power in confined waters because they are slow to stop. The motor engines of the *Irvingglen* quickly produce more revolutions per minute than the turbine engines with which the crude oil tankers are equipped, and also develop the same power astern as ahead, while turbine engines are slow in providing stern power.

To meet a request by the shipping agents for a ruling on the safe draught for ships, the pilots considered the matter and recommended that a safe maximum draught for tankers entering Courtenay Bay during the freshet season would be 26 to 27 feet. Their advice was not followed and the lighter-tankers continued to load many inches in excess of the recommended limit. In one instance, two days after their recommendation was made, the lighter-tanker *Irvingdale* was loaded to 29 feet. The Master apparently had not been informed of the pilots' recommendation.

The pilots stated that some operators occasionally overloaded their tankers to a draught that made it impossible to navigate them in the depth of water available. Since delays due to this factor could be avoided by consulting either the pilots or the tide tables, the pilots should not be held at fault.

When pilotage operations are being planned, crude oil tankers are given priority because their entry is severely limited by the current, the tide and the depth of water in the Courtenay Bay channel. By mutual agreement with the agents, other assignments are delayed, if necessary, in order to give service to these tankers when the tide is favourable. Crude oil tankers are not piloted at night and the limited working periods of daylight high tide often cause serious delays.

Pilot Francis Quinn gave an example of the pilots' co-operation. On May 21, 1963, he was assigned to pilot the *Robert Watt Miller* into Courtenay Bay to the crude oil wharf, which was then occupied by the *Irvingdale* discharging and due to leave at 9.00 a.m. The weather was foggy but clearing. He moved the ship from her anchorage to the sea buoy in order to be closer to her berth but he then realized that the *Irvingdale* was still at the wharf. He was unable to find out when she would leave. It was 10.50, and high water was at 10.52. The pilots prefer to reach the end of the breakwater one hour before high water under normal conditions, but they extend this period up to, but not after, high water. At 10.50 they were still two miles off. In view of the circumstances, the Master urged the pilot to return to the anchorage (where the ship had been for several days) but the pilot considered he could bring her in and in order to gain time, he manoeuvred to a more favourable position. When he learned that the *Irvingdale* was leaving he proceeded in and was inside the breakwater when the *Irvingdale* began to move out. The Master on this occasion mentioned to Mr. Nadon of the refinery that the credit for berthing the ship and thus saving valuable time and money might go to the pilot.

The pilots realize that delays in berthing "super-tankers" result in financial loss to the company.

The Commission's Nautical Adviser observed the pilots piloting these large oil tankers from their anchorage to their berths. (Ex. 1460(kk)). On September 4, 1963, he boarded the *Petro Sea* (17,698 NRT, 712 feet long, draught 35 feet and propelled by turbine engines). He reported:

"Pilot Alexander handled this marine giant with great caution and was particularly careful to keep manoeuvring speed down to the bare minimum. The effect of brute weight was very noticeable and the problem of taking the way off these ships easily understood."

On September 5 he boarded the large tanker *Martita*, also propelled by turbines. His report stated:

"The pilot again made a very slow and cautious entrance and again it was demonstrated that turbine astern power is slow to take effect when great weight is involved".

1963 was a difficult year for tankers because powerful currents lasted longer than usual during the freshet. Out of five which arrived between April 27 and May 24, two, the *Chevron Transporter* and the *Venture*, had to be completely discharged by lighters while at anchor. Two were brought in partly lightened after many days at anchor, and the fifth, which arrived on May 17, was brought in five days later with its full cargo, but only after the freshet had subsided.

The delays the Irving interests complain about are not restricted to the freshet period but also to those that occur during other adverse conditions, such as wind and fog. They charged that, according to their experience, the decision whether a ship will be brought in or not depends greatly on who is going to be the pilot.

Exhibit 414 shows that in 1960 two ships were brought in to Courtenay Bay after two days' delay and after they had been partially lightened. In 1961, however, all ships were berthed fully loaded. Mr. Forsythe felt that this proved there were differences of opinion among the pilots and it was also his view that the *Venture* could have been brought in partially lightened in 1963. The same exhibit shows that the three ships that entered in 1963 were taken in four to seven days after the *Venture's* departure, and that the *Davidson* and the *Miller* were lightened at the same time as the *Venture*. The *Davidson*, which arrived two days prior to the *Venture*, remained at anchor for sixteen days prior to being moved, seven days after the departure of the *Venture*.

The Irving interests understood that under certain adverse conditions it would be almost impossible to bring a crude oil tanker into Courtenay Bay. Their main problem is to plan ahead and obtain a reasonably accurate forecast. Two or three days' notice—the longer the better—that a crude oil tanker could arrive or not would improve the situation considerably for them. They expect interference from unpredictable factors such as wind and fog but, bearing this in mind, extensive delays and considerable expense could be avoided and timely arrangements could be made for lighter-tankers, if a reasonable forecast, based on predictable factors, could be provided. Three solutions were suggested in 1963:

- (i) control the river currents;
- (ii) study the causes of the freshet with a view to predicting the ensuing currents;
- (iii) allow the user to choose his pilot when conditions are adverse.

In 1968, a fourth solution, i.e., to select a new site especially suitable for berthing crude oil tankers and other large vessels, was being considered.

(i) *Controlling the Currents*

During the freshet, currents created by the strong outflow of the Saint John River are the principal hazard; if these could be controlled or prevented, the navigational situation would be vastly improved. It was suggested that the river could be diverted by a dam or that the freshet could be reduced by breaking the ice during the winter to release the water earlier. The latter was tried in 1962. The Department of Transport reported on the experiment that:

"the attempt made in 1962 to use ice breakers to break the ice in the Saint John River with a view to reducing the effect of the freshet was a failure and no suggestion to repeat the attempt was later made." (Ex. 1460(mm)).

(ii) *A Study of the Freshet*

Mr. W. R. Forsythe proposed that some research be undertaken on the causes of the freshet and stated that his Company would be willing to co-operate financially. The Commission was informed that this was the first occasion such a proposal had been made. The pilots, through their counsel, stated their willingness to co-operate.

Knowing that the main adverse factor was the outflowing river current at the junction of the main channel and the Courtenay Bay channel, and that its strength was in direct relation to the river level, i.e., the amount of water in the river, he made a table (Ex. 413) of the freshet seasons of 1960, 1961 and 1963, showing the level of the river at Oak Point some 15 to 20 miles up river from Saint John, and the high tide level.

Considering that one or two days may elapse before the effect of the water level at Oak Point is noticeable in Courtenay Bay channel, the graph (filed as Ex. 414) indicates that all cases of delay occurred during peak high water periods, the worst being in 1963, between April 22 and May 16, when some tankers were not piloted in and others delayed until the peak subsided.

The level of the river has a direct effect on the strength of the current; furthermore, high water level upriver takes a few days to reach the harbour and affect the current. From this reasoning Mr. Forsythe concluded that a study of the water level upriver (at Oak Point for instance) might provide rules to help forecast the strength of the current in the harbour.

(iii) *Selection of Pilots*

Mr. K. C. Irving argued that, taking into consideration the various factors involved in pilotage especially for Courtenay Bay, there might be room for some difference of professional opinion, but only to a certain degree, and that much depended on the ability of the individual pilot. He felt that only reasonable allowances should be made for such differences of opinion and that the Supervisor should see to it that they were controlled. He suggested that the easiest way to remedy the situation would be to allow the owner, or the agent, to select the pilot for any assignment; unless there was a correcting factor or unless something happened you could "drift and drift" until the situation in Courtenay Bay became almost impossible. This suggestion was never discussed with the pilots by the Irving interests, but they took the matter up with the Pilotage Authority through the local Supervisor by letter after accidents had occurred in the Reversing Falls. However, their suggestion received an absolute refusal (vide p. 99) and no opportunity for further discussion was afforded.

Mr. Irving agreed that if a pilot does not feel that conditions are safe he should not bring a ship in, but if a pilot is prepared to undertake an assignment he should be permitted to do so. In such a case, the Company should have the right to engage the pilot who, they believe, has sufficient

ability to bring a tanker in under what he may consider reasonable conditions for him. Although one should not go beyond what is reasonable, there is always a calculated risk involved in any ship movement.

COMMENTS

It must be recognized that navigation into Courtenay Bay for large vessels, especially if propelled by turbine engines, is an extreme situation similar to transiting the draw of the railway bridge in the New Westminster District. Hence, it should be considered an exceptional situation and treated accordingly.

The effectiveness of a pilotage service should not be limited to the level of its least competent members, nor subjected to the hazards of a strict tour de rôle which determines blindly whether a ship's movements will be made immediately, after some delay, or not at all, depending upon the degree of competence of the pilot who happens to be next on the roster.

As urged by Mr. Irving and illustrated by Pilot Cobham, pilots, like men in other fields, are not all equally skilled; some lack experience, either because they are newly licensed, or have not performed a specific type of assignment regularly enough, and there are those who will never improve, whatever experience they acquire. A service should take full advantage of the higher standard of competence of some of its members while, on the other hand, no one should be requested to undertake tasks for which he is not competent.

The pilots are well aware of this fact and, as stated by Pilot Frederick Quinn, they will not allow a newly appointed pilot to handle the more difficult assignments. If it is a new pilot's turn on the tour de rôle when a particularly difficult assignment arises, the pilots arrange among themselves to have it handled by a senior pilot.

Despite the fact that the Supervisor has the authority to give any assignment to any pilot of his choice, pilot Quinn added that the pilots would resent the Supervisor doing so. This attitude indicates that merely giving discretionary powers to the Supervisor does not go far enough because generally he will not use them, if by so doing he runs the risk of displeasing some of the pilots. Hence, appropriate rules should be enacted in the regulations.

It is generally agreed that the practice of permitting shipping companies to select and retain special pilots for their vessels should not be allowed. The main argument in favour of this system is that it enables pilots to gain detailed knowledge of the ships they pilot but the inherent weakness is that the employer-employee relationship which inevitably develops places the pilots in a dilemma whenever there is a conflict between safety and the company's interests

On the other hand, the service should be organized to ensure that assignments are not given to pilots who are not fully qualified to handle them.

It is considered that the most efficient procedure would be to adopt the grade system and, at the same time, give selected pilots special training for certain types of assignments.

The number of pilots on establishment has no bearing on the implementation of a grade system which merely classifies them in accordance with their competence. Since such a system is not based on seniority but on the skill, experience and record of each pilot, competence is the criterion for promotion to a higher grade.

In view of the navigational problems encountered in Saint John, it is considered that such difficult operations as navigating large crude oil tankers during the freshet period, or navigating the Reversing Falls, should always be assigned to the same Grade A pilots who thereby enhance their *expertise* to the highest possible degree. Other pilots selected for their skill should receive special training to prepare them for these difficult assignments by being required to accompany the assigned pilots as learners as often as possible.

Pilotage is a service to shipping and no effort should be spared to enhance its efficiency.

(iv) New Suitable Site for Berthing Large Vessels

The fourth solution to the Courtenay Bay problem is now receiving serious consideration, i.e., to abandon Courtenay Bay for larger vessels and use newly created, unobstructed deep water berths at a new site (vide p. 68). Even with the most expert and competent pilots, the physical restrictions of Courtenay Bay and its approaches already make it inaccessible for modern crude oil tankers, and with the continued trend to larger vessels, even costly improvements would soon prove insufficient.

(b) Reversing Falls Problem

Up to January, 1962, the Irving Oil Company Limited employed licensed pilots to navigate its ships through the Reversing Falls to the pulp and paper mill at Union Point. The principal carrier was the *Irvinglake*, first a self-propelled ship but later used as a barge. During the period 1958-1962 inclusive, the pilots made 119 trips through the Reversing Falls in Irving vessels (Ex. 425). After an accident, which occurred on January 10, 1962, and the events that followed, Mr. K. C. Irving decided to dispense with licensed pilots and organize his own system of pilotage with two or three of his tug Masters. However, as noted hereunder, the Company still employs licensed pilots, but only in special circumstances.

The records of Irving Steamships Limited show six accidents to its vessels in Saint John with a licensed pilot on board:

- (i) October 30, 1951, S.S. *Otterhound* passed under the bridge and while rounding Split Rock struck on the port side forward. There was a tugboat assisting. The Supervisor's records indicate that the pilot was not considered responsible.
- (ii) February, 1952, S.S. *Otterhound* with a tug assisting struck while passing under the bridge. The Supervisor has no record of this incident.
- (iii) May 20, 1957, M.V. *Seekonk* struck Split Rock. The Supervisor's records indicate that the cause of the accident was a strong current setting the ship. No blame was attached to the pilot.
- (iv) January 25, 1961, M.V. *Irvinglake* grounded on Navy Island, while proceeding toward the bridge. Two tugs were assisting. The cause of the accident was indicated in the Supervisor's report as striking an uncharted object in the channel.
- (v) January 10, 1962, a tugboat was jammed between Split Rock and the barge *Irvinglake*. Three tugs were assisting. After this accident Irving Steamships Limited discontinued regular employment of licensed pilots.
- (vi) July 30, 1962, a licensed pilot was employed due to the absence of Irving Steamships Limited's unlicensed pilot. The barge *Irvinglake* grounded on a rock near Irving Pulp and Paper Limited. Three tugs were assisting.

The evidence regarding the *January 25, 1961, accident to the Irvinglake* is contradictory.

- A. The vessel's Master, Captain Chisholm, stated that the *Irvinglake*, a live ship at the time, assisted by the tug *Irving Teak*, secured on her port side, and by another small tug, was proceeding through the harbour towards the Reversing Falls. He was assisted by a licensed pilot. As they were proceeding close to the west side of the harbour, he noticed that they were passing so close to the black spar buoy No. 62.5J that he mentioned the fact to the pilot who was watching the manoeuvre closely but did not answer. He did not take over from the pilot because he felt that the pilot knew more than he did about the features of the harbour and, furthermore, he himself had often passed close to the buoy, but never so close and never with a ship drawing 17 feet. The current at that stage of the tide was setting towards the buoy. Then he saw the buoy pass between the tug and the ship and go under the stern. When about halfway past the buoy the ship struck the bottom causing a leak in the dry cargo hold. While trying to push her off,

the tug *Irving Teak* broke its propeller, became disabled and had to be taken to Market Slip by the small tugs. One of the Saint John Tugboat Company's tugs was sent to assist and took the *Irvinglake* to pier No. 4, where two ten-inch pumps were used to keep her afloat.

- B. The pilot stated that he had frequently navigated ships in that area and had occasionally passed much closer to the buoy. He contradicted Captain Chisholm's statement by saying that the spar buoy did not pass under the ship and that when they struck the ledge the buoy was 60 feet abeam. He added that the Captain had told him that the draught was 17 feet but after the accident he measured and found 19 feet. At that time, however, there was water in number 1 cargo hold.
- C. Captain MacKinnon, the Supervisor of Pilots, stated that, according to the investigation, the vessel had apparently struck some obstruction in the channel opposite black spar buoy No. 62.5J and that Captain Chisholm, the Master of the vessel, corroborated the pilot's report to the effect that there was obviously some obstruction in the channel that nobody had known about before. The only action he took with regard to the alleged submerged object was to make his report to Ottawa. He did nothing to have the alleged object removed from the channel or located and he had not "the faintest idea" whether it was removed or not.

The Casualty Report (Ex. 60) indicates that the pilot was reprimanded: the Authority considered that the pilot had committed an error of judgment in allowing the vessel to approach too close to the far side of the channel and noted that the buoy existed to mark an obstruction. The pilot should have known that the chart showed the ground extended past the buoy and that there is only three feet at low tide outside the buoy.

Reporting on the *January 10, 1962*, accident to the barge *Irvinglake* the Supervisor stated that the accident was caused by the current under the bridge catching the barge, which was being assisted at the time by the tugs *Irving Teak* and *Irving Pine*, and that no blame was attached to the pilot.

The notarial protest made at the time by Captain Walter Patterson, Master of the steam tug *Irving Walnut* (Ex. 416), is to the effect that when the *Irvinglake*, under the direction of a licensed pilot and with three assisting tugs—*Irving Oak*, *Irving Teak* and *Irving Walnut*—was approaching Split Rock at the entrance to the Reversing Falls, the pilot ordered "stop engines" and "full astern", but before the tugs could be put "full astern" the tug *Irving Walnut* was pushed aground on Split Rock by the *Irvinglake* and the tow lines broke. The engines of the *Irving Walnut* were stopped immediately and the backwash from the *Irving Oak* floated the *Irving Walnut* off the rock and the *Irving Walnut* returned to pier No. 5 under her own power.

After this accident, J. D. Irving Limited wrote the same day to the Supervisor of Pilots requesting that, because of the frequency of accidents, an investigation should be held. On January 12, the Supervisor answered, without first seeking advice from his superiors, that the responsibility for the safe navigation of any vessel always rests with the Master, whether or not a pilot is aboard; that the accident arose because the tugs supplied were unable to control the ship when it took a sudden sheer and that the pilot's confidential report was being sent to the Department of Transport where further correspondence should be addressed. The least that can be said is that this letter from the local Supervisor was untimely and unwarranted and was unlikely to improve the already tense relations between the Company and the pilots.

On February 26, J. D. Irving Limited wrote again saying that, having had no assistance from the Supervisor in ascertaining whose fault it was, they would request that Pilot —— be forbidden to pilot any of their vessels through the Falls in future. On February 27, the Supervisor replied that it was no fault of the pilot, that if the Company did not want Pilot —— to pilot their ships they would have to delay movages when it was his turn, and that in any event with the *Irvinglake* there was no obligation to take a pilot (Ex. 420). Upon receipt of this letter, Mr. K. C. Irving decided that the services of licensed pilots should be dispensed with, in view of the lack of interest on the part of the District Supervisor and also because to delay the movement of their ships whenever it was Pilot ——'s turn would be a costly proposition.

In his covering letter to Ottawa forwarding the pilot's casualty report, the local Supervisor blamed the tugs for the accident and praised the pilot:

"The tugs are underpowered and have very poor manoeuvring qualities as well as being very poorly manned. The fact that this vessel has been moved so many times with so little damage speaks very well for the skill of the pilots..."

The word of the local Supervisor was taken for granted and his report was not investigated further. However, the Authority in Ottawa was not informed by the Supervisor that the shipping interests had requested an investigation.

Mr. Irving considered that two accidents in one year in the Reversing Falls with licensed pilots aboard were "very bad from the standpoint of costs and disruption of service". He stated that the experience of the Irving companies had been good since they dispensed with the services of licensed pilots: whenever one of their vessels is to transit the Reversing Falls they use one of their employees—Captain W. C. Chisholm or Captain A. W. Cobham (Ex. 416).

He added that this decision was taken, not because the licensed pilots were not capable, but because the Companies were dissatisfied with their performance. They could not afford to pay the bills for the accidents and they thought they could do better themselves. The Reversing Falls, in Mr.

Irving's opinion, are not dangerous to navigate if one knows how to handle them. They have had tugs coming down there for years and, while there are difficulties, negotiating the Falls is an everyday matter and they are easily passed with local experience. The important point is to time the transit when "the water is right". Since the water conditions are favourable for a very short period daily, the timing is most important.

Mr. Irving added that after the accident of January 10, 1962, they could have insisted on an inquiry but, rather than get involved in a lengthy court inquiry with all its trouble and expense, they took what they considered a more practical attitude.

Pilot Francis Quinn stated that the Irving ships have continued to have accidents when transiting the Reversing Falls. The pilots do not have any record of them but he himself witnessed one accident when the *Irvinglake* grounded off Navy Island for twenty-five minutes. On that occasion there was no licensed pilot aboard.

The Irving Oil Company Limited still occasionally employs licensed pilots when, as the pilots say, the weather conditions are not favourable or when the Company's unlicensed pilots are not available. On such an occasion the *Irvinglake* (the same vessel mentioned by Pilot Quinn above) grounded above the Falls on July 30, 1962. The notarial protest (Ex. 416) by Captain A. W. Cobham, Master of the steam tugboat *Irving Teak*, states in effect that his tug with the assistance of the tugboat *Irving Oak* took the *Irvinglake* in tow at Pier 5 at the Port of Saint John and proceeded from there to the Irving Pulp and Paper Company's wharf above the Reversing Falls, under the direction of a licensed pilot on board the *Irvinglake*. The *Irving Teak* was towing ahead and the *Irving Oak* was secured to her port quarter. Just above Navy Island, another tugboat, the *Irving Pine*, was positioned on her star-board bow.

"... as we neared the Bridge my tug dropped back to take up position on the port bow of the *Irving Lake* ... and about opposite the wharf we commenced to swing to port. As we neared the wharf the pilot ordered the *Irving Pine* to let go and proceed around to the port quarter then the back eddy caused by the incoming tide caught the port bow of the *Irving Lake* and carried the *Lake* up river, the pilot ordered us to go full astern, but the *Irving Lake* continued to be carried up river and struck the ledge or pitch at the Reversing Falls and went hard aground..."

COMMENTS

In this case, the Supervisor of Pilots failed to appreciate, first, that pilotage is a service, second, that especially difficult cases should be treated as cases of exception, thirdly, that from a security point of view a shipping casualty to a vessel creates a presumption of incompetence, if not of fault, on the part of the pilot.

Because negotiating the Reversing Falls is a difficult assignment requiring detailed local knowledge and practice, the Supervisor should have made use of the powers granted him by subsec. 17(1) of the By-law to select the

best qualified pilot(s) for the small number of assignments in this area. By restricting his choice to the same pilot(s) he would enable them to increase their *expertise* and thus ensure a more efficient and reliable service.

This is a clear example of the weakness of a central administration. The Supervisor had become merely a local manager with no real power who had identified himself as a servant of the pilots instead of maintaining the unbiased attitude expected of the local representative of the Authority of a public service.

The solution adopted by the Irving interests to have their ships piloted by an unlicensed pilot is illegal. It is not because of the compulsory payment system, but because of the statutory obligation to use the services of a licensed pilot if such services are desired (vide Part I, pp. 205 to 210).

Therefore, as long as the Reversing Falls remain part of the Saint John District, measures should be taken to ensure that only licensed pilots are employed in that area and that these difficult assignments are performed by the District's most competent pilots.

(c) *Tugboat Problem*

Tugboats are obtained in Saint John Harbour from two sources: the Saint John Tugboat Company, which up to 1959 was the only company providing this service, and the Irving interests, i.e., J. D. Irving Limited and Atlantic Towing Limited, which own and charter tugboats.

Before the refinery opened (1959), the Saint John Tugboat Company owned six tugs which handled all the traffic. The two most powerful, *Ocean Osprey* and *Ocean Rockswift* both 1,000 horsepower, were laid up during the summer because tugs of their size were required only during the winter to handle large vessels. The remaining four tugs were kept in service throughout the year: *Ocean Hawk II* of 900 horsepower and three smaller vessels averaging 400 horsepower, *Ocean Hawk I*, *Spruce Lake* and *Ocean Weka*.

After the refinery became operational and the competing tugboat company was formed, Mr. K. C. Irving charged that the pilots discriminated against his tugs and preferred to use the Saint John Tugboat Company tugs. He noted that the California Shipping Company followed the pilots' recommendations claiming that it could not force them to use Irving tugs if they were inefficient. Hence, he found himself in a dilemma. On one hand, he was required by contract to supply the necessary tugs (which the pilots prevented him from doing) and, on the other, the tugs he had purchased to meet his obligations were not being used and were losing money.

Mr. K. C. Irving stated that the California Shipping Company was not carrying out its contract made with him in 1957, and was trying to justify itself on the basis that the pilots were unwilling to use Irving tugs.

He charged that the pilots are unreasonable, and claimed his tugs are suitable for Saint John Harbour. They are regularly employed by Irving Oil

Company Limited for all their towing operations in the harbour, they are used to berth the *Irvingglen*, the *Irvingstream* and any other vessels that come to the upper wharves and they assist ships to enter and leave the dry dock.

He added that the pilots had been ordering Saint John Tugboat Company tugs to berth and unberth the crude oil ships instead of using the Irving tugs that were placed at their disposal.

He continued that it is not a question of two tugboat companies competing because the Irving interests are not trying to secure the harbour tug business. His tugs were purchased to meet a contractual obligation connected with the supply of crude oil in Saint John. When the California Shipping Company requested tugs of approximately 1,000 horsepower, he complied by purchasing tugs previously used to berth naval vessels in England. He also had them converted to meet local requirements after consultation with marine architects.

Specific complaints received from the pilots were considered and changes made, e.g., the gear ratio of one tug was reduced. But the pilots' complaint that the *Irving Teak*, being an oil-burner, was dangerous near a crude oil ship, was not acted upon because some of the tugs used and ordered by the pilots were also oil-burners.

Mr. W. Walsh, Office Manager for Kent Line Limited (agent for the California Shipping Company) makes the necessary arrangements for tugs, pilots, etc. for crude oil tankers destined for Courtenay Bay. He corroborated Mr. Irving's charges and gave two examples of the pilots' attitude:

- (i) On February 28, 1962, one of his men called the pilot station about a crude oil tanker belonging to the California Shipping Company and, in the absence of Pilot Abrams who was to pilot the ship in, spoke to the Supervisor of Pilots. He was told that two Saint John Tugboat Company tugs and two Irving tugs would be needed. Later, Pilot Abrams called to change the order to three Saint John Tugboat Company tugs and one large Irving tug, adding that otherwise the ship would stay at anchor.
- (ii) In another instance, when a ship was due to sail on a Saturday morning, he contacted Pilot Quinn (the assigned pilot) who told him that two Saint John Tugboat Company tugs and one Irving tug were necessary. When he asked whether two Irving tugs and one Saint John Tugboat Company tug could not be used, Pilot Quinn told him that unless he obtained the tugs he wanted the ship would stay there. Later, it developed that it was Pilot Alexander's turn and he agreed to use two Irving tugs and one Saint John Tugboat Company tug. However, later in the morning Pilot Alexander requested two Saint John Tugboat Company tugs and one Irving tug.

Prior to the beginning of 1960, the pilots asked for three Saint John Tugboat Company tugs and one Irving tug for berthing; in 1963, they asked for two of each, unless the weather was unfavourable. On rare occasions they asked for three Irving tugs. To assist a ship out of the harbour they always asked for two Saint John Tugboat Company tugs and one Irving tug.

Mr. Walsh stated that he, as agent, never told the pilots what tugs to use but that he had asked them whether they could not use more Irving tugs and had received a negative reply.

Kent Line Limited received a letter from the California Shipping Company, for whom they are agents, dated January 11, 1962 (Ex. 422) on the tugboat situation. It stated that tugboat charges would not be paid unless the tug had been ordered by the pilot or by the Master of their vessel, and quoted part of a letter received from the Saint John Pilots commenting on the Irving tugs as follows:

"The *Irving Teak* is a steam tug of little power and very poor manoeuvrability, in addition it is noted that there is generally a constant stream of sparks emerging from her funnel along with a constant cloud of black smoke which is hardly considered desirable when secured to an oil tanker.

The *Irving Oak* is a diesel tug of good power but poor manoeuvrability, it is apparently impossible to run her engine at slow speed and while at times of some use for pushing purposes is of no use on the end of a line.

The smaller tugs proposed are of very little use what so ever and generally of more nuisance than they are worth".

The letter requested corrective action on the *Irving Teak* before it was used in the Company's service again, and stated that the California Shipping Company was in agreement with the wishes and views of the local pilots.

One of the conditions which the California Shipping Company agreed upon when choosing Courtenay Bay as the site for the refinery was the provision for powerful tugs which were not then available in sufficient numbers to service their large tankers. The Irving companies, which already had small river towboats, acquired five large new tugboats between 1958 and 1962 inclusive: *Irving Oak* and *Irving Beech* (both 1,200 h.p.) *Irving Teak* (900 h.p.), *Irving Birch* (450 h.p.), which was not being used in 1963, and *Irving Walnut* (750 h.p.) which was laid up during the summer months.

Two of the newly acquired tugs were converted to diesel, their power was increased and changes were made in their steering apparatus. A test of suitability for service in Saint John indicated they were very manoeuvrable.

At the beginning of 1961 when the *Irving Oak* and the *Irving Beech* had not yet been acquired, Irving Refining Limited, acting as agent for the California Shipping Company, had to ascertain that the necessary tugs would be available throughout the year. On March 24, 1961, the Saint John Tugboat Company wrote that unless special arrangements were made after April there would be only two tugboats available in the harbour when the winter season closed (Ex. 622). Another letter, dated March 27 (Ex. 623) indicated that the available tugs would be the *Ocean Hawk II* (900 h.p. diesel)

and the *Ocean Weka* (400 h.p. steam) at a cost of \$450 per day, for every day of the month including Sundays and holidays, whether used or not. The normal charge by the Saint John Tugboat Company for berthing and unberthing a ship is \$125 per tug per ship.

The California Shipping Company refused to assume this obligation, relying on Irving Refining Limited's obligation to provide tugs when needed at the normal charge of \$125 per tug when used. Irving Refining Limited had to pay the difference between the standby charge and the ordinary fee. The agreement with the Saint John Tugboat Company had to be carried out and the result was a legal suit against Irving Refining Limited for some \$80,000. By judgment rendered on March 22, 1963, the Irving Refining Limited had to pay \$79,639 to the Saint John Tugboat Company Limited.

With regard to the situation in 1963, the California Shipping Company's letters dated June 13, 1963, and June 27, 1963, instructed Kent Line Limited to order five tugs for all vessels both inbound and outbound that were owned and chartered by the California Transport Corporation. The tugs to be employed were specifically two Saint John Tugboat Limited tugs, *Ocean Osprey* and *Ocean Hawk*, and three Irving Tugs, *Irving Beech*, *Irving Oak* and *Irving Teak*. This arrangement was apparently the result of negotiations between Mr. Irving and the California Shipping Company. Since other crude oil ships did not come under these instructions, tugboats were provided for them as requested by the pilots.

The Irving tugboat charges are the same as the Saint John Tugboat Company's, i.e., \$125 per tug per assist. However, the pilots never suggested the use of five tugs under normal navigational conditions, and as a consequence of the new instructions it costs \$250 more for tugs per tanker than before, i.e., one extra tug both inward and outward.

The Supervisor's letter dated December 28, 1961, to the California Shipping Company (Ex. 422) referred to a recent conversation he had had with their Captain Ingraham and stated that the views of the pilots on the tugboat requirements for the handling of crude oil tankers remained the same: "... the desired minimum of tugs under normal conditions is at least four (4) well designed and manoeuvrable tugs of over 1,000 H.P. during berthing of loaded vessels and at least three (3) of the above during unberthing of ballasted vessels." The letter continued that the situation had been met to some degree by the use of *Ocean Osprey*, *Ocean Rockswift* and *Ocean Hawk* of the Saint John Tugboat Company and one Irving tug, usually the *Irving Teak*. The Supervisor added that pressure was being put on the pilots to use the *Irving Teak* and the *Irving Oak* and some small river tugs but he disagreed for the reasons above quoted and requested permission for the pilots to continue to use the Saint John Tugboat Company tugs "at least until equivalent ones are supplied and properly manned by J. D. Irving Company Limited".

The Supervisor stated in his testimony that the pilots do not order tugs but recommend to the agent which tugs they prefer. The only ground for recommending which tugs should be used is the safety of the vessel concerned. The Saint John Tugboat Company vessels are not really much superior in power or better built, but they are better handled. It is strictly a personnel problem—their Masters have long experience and remain in the employ of their Company, whereas the Irving vessels have a continuous turnover of personnel. "No man is a born, experienced tugboat master; he has to learn his job".

When the Supervisor of Pilots wrote to the California Shipping Company, he did not know that the *Irving Teak*, to which he referred as a "steam tug of little power", had 900 h.p.; he understood it had around 600 h.p. as stated in Lloyd's Register. He obtained his information about its manoeuvrability from the pilots, (this was prior to the modifications made in 1962) and it had been reported to him that the Irving tugs had considerably smaller rudders. At the time of his letter, there were only two Irving tugboats employed towing tankers.

The Supervisor did not consult his superior officers in Ottawa before he wrote this letter because it was a local matter. He did not know that the California Shipping Company had a contract with the Irving Company to supply tugboats and he never thought that his letter might induce a breach of contract.

The pilots emphasized that the Saint John Tugboat Company tugs are superior in manoeuvrability to the Irving tugs and also have more experienced Masters, but they are not numerous enough, especially for servicing large crude oil tankers.

In many instances, the Irving tugs were reported to have shown lack of experience by doing the exact opposite to what the pilots asked them to do.

All the pilots were unanimous in their complaints that the Irving tugs lacked manoeuvrability, that their Masters lacked competence and that there was an absence of teamwork in their crews. The pilots cited numerous occasions when these tugs performed badly and risked serious damage or even disaster.

Often when an Irving tug was approaching a ship to make fast it collided with another tug. On one occasion a tug stove in a plate of one of the tankers and on another an Irving tug trying to get alongside a Saint John Harbour Company tug, which had already secured to the ship, came too fast and collided with it damaging its bulwark.

Pilot R. V. Cobham stated that as far as he is concerned he never orders tugs, but will give advice to the agent or to the Master. Under ordinary conditions, it makes no difference to him which company sends tugboats. In adverse conditions, however, he would rather have an experienced tugboat Master than someone whose experience is very limited.

In his opinion, the Saint John Tugboat Company Masters are more experienced. When alongside a ship, the Irving tugs are quite as good as the Saint John Tugboat Company tugs, but they are not as manoeuvrable and can not be trusted when towing with a hawser. It was explained that when a tug is alongside all it has to do is push or go astern, and it is not necessary to keep in position. But when on a line, the position of a tug has to be controlled in relation to the ship. Towing with a hawser requires manoeuvrability and experience.

While it was shown by the evidence and by Exhibit 428 that the Saint John Tugboat Company Masters had held their commands for over five years (and even much longer), Exhibit 427 indicated that in three years the Irving tugs changed Masters many times: e.g., the *Irving Teak* had ten changes in two years involving six different Masters, and in 1962 and 1963 the Master of the *Irving Beech* changed five times.

Referring to signals to tugs when manoeuvring ships, Pilot F. L. Quinn stated that at first glance they seem to be confusing, but they have been in use in Saint John Harbour for a very long time. The Irving tugs appear to be the only ones with which the pilots have difficulty. Captain H. M. Haines, Master of the *Ocean Hawk*, stated that he is well acquainted with the signals and has no difficulty understanding them. If by chance he does not hear a signal, he makes no acknowledgement with the tug's whistle and in this event the pilot generally comes out to the wing of the bridge to tell the tug Master what he wants. There had never been an occasion when he was unable to get the pilot's message by some means. When handling a ship with his tug he watches the bridge of the ship where the pilot is usually stationed.

The pilots have had some difficulty communicating with the Irving tugs because of the noise they make. Pilot F. L. Quinn stated that he had tried to call them on Frequency Modulation (F.M.), but found that the radiotelephone of the *Irving Beech* was in the wheelhouse down below while the Master was stationed on deck. Thus, communication depended on a man to relay messages, and five times out of ten, he was not available. Pilot Quinn had also tried a loud hailer or "bull horn".

For a time, small walkie-talkies were provided by the Saint John Dry Dock Company for use when berthing and moving ships in and out of the dry dock. They worked very satisfactorily but suddenly, for reasons unknown, they were withdrawn. The pilots were provided with this equipment on account of the difficulties they had with the Irving tugs. At one time, the Superintendent of the dry dock had even instructed the pilots not to use Irving tugs to move ships in and out, but these orders have since been rescinded.

Of the five Irving tugs, two have been laid up, the *Irving Birch* since March 22, 1963, and the *Irving Walnut* since the summer of 1963, because of lack of employment.

Captain Chisholm, one of the Irving tug Masters, stated that the Irving tugs are very manoeuvrable, as good as the Saint John Tugboat Company tugs (he was a relief Master for a month in the *Ocean Hawk*, and for thirty-five years he has seen the other tugs manoeuvring in the harbour). The Irving tugs were given manoeuvrability tests in 1962 by Mr. A. M. Kerr, General Manager of the Saint John Shipbuilding & Dry Dock Company Ltd., after some improvements had been made at the suggestion of the pilots, *inter alia*, enlarging the rudder. The tests were made "to determine the efficiency of each tug in handling vessels of all types and sizes in berthing alongside wharves and docks, and in assisting from berths and docks into the stream and in the Port of Saint John".

When the tests were carried out, Captain Chisholm was on board together with Mr. A. R. Davis, the Yard Foreman of the Saint John Shipbuilding & Dry Dock Co. Ltd., who holds a Master's certificate and whose duties include the carrying out of such tests. Mr. Davis stated that they carried out such manoeuvres as speed trials, moving to port and starboard, crash stop, full astern, full ahead. As far as manoeuvrability was concerned there was nothing wrong with the tugboats. He agreed with Mr. Kerr's report, which was most favourable (Ex. 417).

Mr. James M. Fraser, Naval Architect and former Supervisor of the Saint John Shipbuilding & Dry Dock Co. Ltd., who, at the time of the Commission's hearing, was in a consultative capacity with the Saint John Tugboat Company, conceded that the *Irving Beech* and the *Irving Oak* have more horsepower than the Saint John tugboats, *Ocean Osprey* and *Ocean Rockswift* (both 1,000 h.p.) and *Ocean Hawk* (900 h.p.). These were the only tugs owned by the Saint John Tugboat Company that were in use at that date.

In a general way, the characteristics of the Saint John Tugboat Company tugs and Irving tugs were comparable. The pilots conceded that the manoeuvrability of the Irving tugs had improved since changes were made.

The letter of December 28, 1961, from the Supervisor of Pilots to the California Shipping Company was written after consultation with the pilots just when the Irving tug Master had commenced their operations. At that time they had little experience and their equipment was not handled to the best advantage. At first, the pilots blamed the tugs because they did not want to hurt the tugboat Masters while they were learning. However, their opinion in 1963 was that these Masters had not yet gained the necessary experience. The pilots obtained their first adverse impression of the tugs by observing them operate in the harbour and later when they worked with them. The problems raised in this letter were discussed by the officers of the California Shipping Company and all the pilots.

The Commission's Nautical Adviser had many opportunities to see the Irving tugs *Irving Oak* and *Irving Beech* in action and reported that "they were quite efficient and showed power and good manoeuvrability". But on one occasion, on September 3, 1963, as they were assisting the tanker *Irving-glen*, the tug *Irving Oak* "began belching huge clouds of sparks and had to be dismissed as soon as possible" because of the risk of fire. This left the tanker in a difficult situation at a time when power was needed. On Sept. 4, 1963, he witnessed the *Petro Sea*, a 17,689 N.R.T. crude oil tanker, draught 35 feet, being piloted in Courtenay Bay. He was very impressed by the pilot's skill. He added that "before entering the channel, two harbour tugs and two Irving tugs made fast alongside and these four tugs, acting in concert, provided a very potent aid to docking. The tugs worked quite harmoniously." He also reported that "the Irving tugs are gaining experience daily and I could not see any short-comings in them". (Ex. 1460 (kk.)).

Accident records (Exs. 60 and 426) indicate three accidents attributed to tugs which are not Irving tugs:

- A. In April, 1958, the accident to the S.S. *Rubens* was caused by the tug *Ocean Hawk* getting the vessel across the current. It was listed as "Tugboat captain acting on his own".
- B. On December 22, 1959, the ship *Rathlin Head* had an accident due to the faulty manoeuvres of the tug *Ocean Rockswift*. In Exhibit 60, the cause is listed as "Captain of tug-boat did not understand order".
- C. On January 1, 1960, when the tug *Ocean Rockswift* commenced towing the *Cape Araxos* without orders from the ship the dolphin was pulled out.

COMMENTS

The Irving interests' formal recommendation that the pilots should have no authority to select and engage the tugboats to be used is concurred in.

It is agreed that the present situation is very unsatisfactory and could have been easily avoided through co-operation, understanding and consultation, as suggested by the pilots' counsel in his pleadings.

The pilots should not be involved in selecting tugboats operated by competing owners. Tugboat assistance, like pilotage, is another service to shipping, and it is the responsibility of those providing it to make the necessary arrangements with the ship owners or agents. The pilots should only be concerned with the type of tugs required for a given assignment, and should make their recommendations known before tugs are ordered.

It is true that at one time the Irving tugs were not as manoeuvrable as those owned by the Saint John Tugboat Company, but they were modified and their power increased. It appears from the evidence that they are now comparable in power and manoeuvrability. It is also true that in the three years the Irving tugs had been in operation prior to 1963 their Masters had

been frequently changed, while the Masters of the other company had remained with their tugs for several years. However, the Irving tugs are regularly employed berthing and unberthing large ships for the Irving interests, thus implying that they can function and that their crews are gaining experience.

Nevertheless, in their evidence the pilots were unanimous on the unsatisfactory performance of the Irving Masters, and they recounted various incidents involving the Irving tugs. On the other hand, they voiced their entire satisfaction with the Saint John Tugboat Company's tugs. However, Exhibit 60, which contains accident statistics, discloses three cases (referred to earlier) where the responsibility for a shipping casualty was placed on the Master of a tug which did not belong to the Irving interests. It is also fair to assume that there must have been other incidents which did not result in shipping casualties. "Tugboat captain acting on his own", "tug started without a signal from a ship", "captain of tugboat did not understand order", are the reasons given for those three accidents; they are strikingly similar to the charges levelled by the pilots against the Irving tug Masters. Even now, the pilots' orders are not always understood by the Saint John Tugboat Company Masters, e.g., Captain Haines stated that at times a pilot is obliged to come out to the wing of the bridge and tell them what he wants. The problem of communicating orders is one that the Pilotage Authority and the pilots should try to solve because it has a direct effect on safety.

The attitude of the pilots towards the Irving tugs is too inflexible. This is an unhappy situation because more tugs are needed than the Saint John Tugboat Company can supply and the Irving tugs can not be dispensed with and must be used for special tasks. The decision of some of the pilots never to use Irving tugs except to service an Irving ship is unwarranted and biased: this is no longer a question of safety but amounts to discrimination. It is granted that some Masters, like some pilots, may never increase their skill by experience, but these are unusual cases and, while it is possible that some Irving tug Masters were unable to gain wider experience during the period 1960-1963, this can not be true of them all.

It would be preferable if the pilots tried to co-operate with the tugboat Masters and develop efficient teamwork. Any weaknesses should be reported to the proper authorities in order to have corrective action taken.

It is believed that much of the fault stems from the surrender of responsibility by the Pilotage Authority which results in the non-selective assignment of the pilots by roster. It is considered that the contention between the pilots and the Irving tug Masters would have been resolved long since if, as recommended earlier, the District Supervisor had taken an authoritative and constructive attitude and ensured that only the most

competent pilots were given the more difficult assignments. Under these conditions, pilots and tug Masters would have developed efficient techniques to the great advantage of the pilotage service and the safety of navigation.

(5) WORKLOAD

Pilots' workload is not, and can not normally be, a problem in the Saint John District. Neither in their brief nor during the public hearings did the pilots suggest that they were overworked at any time and no delays were reported due to the lack of a pilot.

However, the method of determining the pilots' workload for statistical purposes and the use of such statistics have been points of contention.

It is often overlooked that pilotage at the operational level is essentially local in character and criteria that are applicable in one District may be totally inapplicable in others. Since pilotage is a local service to shipping, it must be organized to meet variable local requirements. Workload in a District where tasks are fairly evenly spread can not be measured by the same criteria as where pilotage is essentially seasonal or is limited to a few hours a day because of tidal and other restrictions.

As stated earlier, the general criterion is the capacity of the service to meet the demand adequately during foreseeable peak periods of long duration without overworking the pilots. Occasional extra work during unexpected peaks is one of the inherent obligations of the pilots' profession. It is also normal for ships to be delayed occasionally for lack of available pilots at such times. This situation is more likely to occur in a tidal port like Saint John where most ship movements are limited to the height of the tide. At low tide the pilots have few assignments; the occasional smaller vessels of light draught that can enter or leave the harbour at any state of the tide are declining in numbers.

Therefore, in Saint John the present criterion for determining the number of pilots is not their workload but their capacity to meet the demand at high tide. In other words, vessels that arrive in good time should not miss the tide due to lack of available pilots. An isolated case of this nature would serve as a warning to reassess the situation in order to determine whether the margin of efficiency has been reached; recurrences over a period of time would definitely show that the number of pilots is inadequate.

But there is also the other side of the question: are the pilots unduly underworked as was the case in Halifax (vide pp. 246-248)? If this proves to be so, their strength should be reduced accordingly. The present trend in Saint John is to fewer ships of larger size which leads to fewer but more difficult pilotage assignments. This trend should be reflected in the service by

employing a smaller number of pilots who possess the highest qualifications and are remunerated accordingly.

The pilots emphasized that on account of tidal and other conditions their work also consists of planning and co-ordinating ships' movements (vide pp. 82-84).

However, as discussed earlier, the present rigid system would be greatly improved and the service made more efficient by the appointment of a co-ordinator, thus relieving the pilots of their duties in the pilotage office and reducing their shore functions to advising the co-ordinator of their requirements.

A reasonable allowance should be made for unavoidable absence due to illness. Annual holidays should be taken during the slack season and arrangements made to provide other rest periods of short duration during the peak months.

In order to solve these problems, the Pilotage Authority should not only compile adequate data to ascertain the pattern and extent of the demand for pilotage at any given period of the year but also should make a detailed analysis of the pilots' time spent directly or indirectly on pilotage. This analysis should be accompanied by data on the restricting factors that prevailed for each assignment so that the pilots' workload for any given day may be fully appraised. The Commission does not possess such details and it was not deemed necessary to obtain them for the purpose of this Report. However, from the information available it is possible to obtain a fairly accurate picture of the pilots' workload.

The pilots have rightly objected to the use of average figures to establish their workload but do not hesitate to make use of them to support their own proposals. Nevertheless, the proof they seek from them is not at all conclusive. For instance, in support of their request for a tenth pilot they use the average figures of the number of assignments per pilot per year in order to show that the present stand of the Pilotage Authority for refusing their request is illogical because, according to these average figures, the pilots are now overworked in comparison with the years 1946 and 1947. This is a fair example of the danger of using statistical figures without ascertaining whether they are truly comparable. As indicated on pp. 66-68, the traffic pattern has changed substantially since then. The marked increase in year round traffic now enables the pilots to perform a greater total number of assignments under normal conditions. The following table shows the total number of assignments for the 10 years 1958/59-1967, including movages and Reversing Falls transits, the average number of pilots on establishment per year and the average number of assignments per establishment pilot. For comparison with other statistical data, vide graph and table in Appendix A.

Study of Saint John, N.B., Pilotage District

Year*	Total Number of Assignments	Establishment of Pilots	Average Number of Assignments Per Establishment Pilot
1958/59.....	1,460	10	146.0
1959/60.....	1,700	9.18	185.2
1960.....	1,896	8	237.0
1961.....	1,963	8.2	239.4
1962.....	1,747	9	194.1
1963.....	1,626	9	180.7
1964.....	1,701	9	189.0
1965.....	1,768	9	196.4
1966.....	1,725	8	215.6
1967.....	1,521	8	190.1

*Up to 1960, annual reports were for the fiscal year.

SOURCE OF INFORMATION: EX. 45.

However, the following self-explanatory table is more informative. It also shows that the despatching system now in force shares the workload unevenly because the duty pilot must combine office responsibilities with inward pilotage (vide p. 83).

Year	Busiest Month	Total Assign- ments	Busiest Pilot	Average per Estab- lish- ment Pilot	Least Busy Month	Total Assign- ments	Busiest Pilot	Average per Estab- lish- ment Pilot
1961	March	295	43	36.0	June	89	19	10.9
1962	March	275	46	30.6	August	73	15	8.1
1963	March	268	39	29.8	June	62	12	6.9
1964	January	247	30	27.4	September	80	13	8.9
1965	March	312	67	34.7	July	78	18	8.7
1966	March	214	30	26.7	September	62	12	7.8
1967	March	205	29	25.6	September	80	13	10.0

SOURCE OF INFORMATION: EX. 1306.

But even these statistics must be viewed with great caution. For instance, the busiest month in 1962 was March with 275 assignments, i.e., 118 inward, 126 outward and 31 movages. The busiest pilot was probationary pilot A. C. Vallis who was given additional assignments for experience. He performed 20 inward, 22 outward and 4 movages—a total of 46, while the busiest regular pilot was L. O. Abrams with 15 inward, 17 outward and

5 movages—a total of 37. A similar situation prevailed in March, 1965, when the probationary pilot spent only three days without an assignment compared with an average of ten days free for the other eight pilots. The probationary pilot also performed six assignments in one day while the others were not required to perform more than three in any one day. Under the present system, the duty pilot has most to do during his day on duty while the others may be, and often are, unemployed, e.g., Pilot Merriam stated that on February 14, 1963, when he was on duty during the peak season he performed three of the 10 assignments which occurred during that time (one early in the morning of the 15th, prior to the expiration of his turn of duty) leaving 7 assignments for the other 8 pilots.

The Department of Transport has also kept statistics of the pilots' time on duty from which averages based on periods of 12 months have been calculated. The pilots charged that these statistics did not give an accurate picture of their time on duty because they did not take into account the time taken to travel from the pilot station to embark, nor the time spent in the pilot office co-ordinating and planning pilotage movements. The statistics indicate, however, that travelling time is arbitrarily set at 2 hrs. per assignment in addition to time spent on board. For the year 1962, these statistics give the following information:

Basis of Workload	Total Workload in Hours	Average Workload per Establishment Pilot		
		Yearly Hours	Monthly Hours	Daily Hours
Total for year — 1962*	3,360.3	373.4	31.1	1.0
Busiest Month — March**	477.3	636.4	53.0	1.7
Least Busy Month — August**	139.8	186.4	15.5	0.5

*Exhibit 1298.

**Exhibit 1306.

For the reasons mentioned earlier, while these average figures are more significant on a monthly rather than a yearly basis, they still are of little value in computing the time on duty of an individual pilot on a given day. For the year 1962, the D.O.T. statistics indicate that the length of assignment for trips varied between 10.7 hrs. maximum to 0.5 hrs. minimum with most trips averaging 1.8 hrs., while movages varied from a maximum of 6 hrs. to a minimum of 0.5 hrs. with most averaging 2 hrs.

The evidence brought before this Commission re time on duty while on board, i.e., from "heave up" to "lines out", showed about two hours per trip and a total distance of some six miles. If a crude oil tanker is being piloted, the pilot must be aboard at half-flood tide to ensure that the ship is under weigh two hours before high water at the latest. It takes about an hour to

cover the four or four and a half miles to the Courtenay Bay breakwater, half an hour from the breakwater to the wharf and three quarters of an hour to secure. This is a slow operation but in most circumstances it can not be performed more quickly.

Mr. Tracy Cleary, Kent Line's accountant, using a record he kept from information obtained from Masters of crude oil tankers (Ex. 415), established that for a crude oil tanker:

- (a) time "pilot boarded" to "all fast" varies from 2.35 to 4.10 hrs. with an average of 3.17 hrs.;
- (b) time "anchor aweigh" to "all fast" ranges from 1.46 to 3.33 hrs. with an average of 2.34 hrs., plus an additional 10 to 15 minutes to weigh anchor.

Pilot W.B. Alexander gave an example of the time required to berth a crude oil tanker. On July 15, 1962, the *British Victory* took him from 8.30 a.m., when he reported to the pilot office, to 1.30 p.m., when he returned to the pilot office, i.e., five hours to complete the assignment. It was about 9.15 a.m. when he embarked and he disembarked at 12:30 p.m. to report back to the pilot office. It was his turn and he knew of the assignment about 8 or 9 o'clock the night before.

A cargo vessel takes one hour to one and three quarter hours to cover the five or six miles from anchorage to berth in the main harbour but a little less if she is boarded when under weigh. For these ships, the pilots plan to be on station about one hour before E.T.A. In good weather, it takes 25 minutes for the pilot vessel to reach the boarding area off the fairway buoy, but in adverse weather it may take an hour and a half.

COMMENTS

The Saint John Pilotage District is not generally comparable to other Districts because of the following factors:—

- (a) The seasonal traffic pattern is such that three fifths of the annual traffic occurs during the four-month winter period, for which there must be sufficient pilots to provide adequate service.
- (b) The high tides restrict navigation for most deep-sea ships and confine their pilotage assignments to a period two hours before and two hours after high tide during daylight.
- (c) The pilots' land travel is negligible.
- (d) No leave is granted or taken during the four-month peak traffic period.

From the point of view of the pilots' workload the duty pilot system is considered wrong and should be abolished. For both the efficiency of the service and safety of navigation pilotage must be performed by rested pilots. Fatigue is synonymous with unfitness. It is not normal, nor should it be required, for a pilot to undertake all the assignments he can handle during a

24 hour period and, at the same time, be held responsible for the functions of the pilot station. On many occasions there may not be enough activity to keep the duty pilot fully occupied, thus allowing him time for rest, but this may not be the case during peak traffic periods. There is no valid reason for requiring a tired pilot to undertake an assignment when other well rested pilots are available. This problem would be partially solved if, as recommended, despatching together with planning and co-ordination were actually exercised by a representative of the Pilotage Authority.

6. PILOTS' REMUNERATION AND TARIFF

(1) PILOTS' REMUNERATION

At the time of the Commission's hearings in 1963 there was no contention regarding the pilots' remuneration. The pilots appeared satisfied with their income for they made no reference to it in their brief and voiced no complaint at the hearings. They stated that the sole purpose of their request for a surcharge on "supertankers" was to correct an obvious weakness in their time-honoured method of calculating pilotage dues and not to produce additional revenue. This point will be studied later.

For the purpose of this Report the remuneration of the Saint John pilots must be ascertained. (For the different interpretations of the term "pilots' remuneration" see Part II of the Report, pp. 132 and ff.)

Except for the dues payable to the Department of Transport for the provision of pilot vessel service, all pilotage dues, including those collected pursuant to the compulsory system, are paid to or on behalf of the pilots.

The Department of Transport assumes all operating expenses, except the pilots' land transportation to and from wharves. The cost to each pilot of the pilot vessel service operated by the Department of Transport is what he himself has charged the ship he has served, i.e., the pilot boat charge. For this reason, no pilot is ever out of pocket on this account. However, each pilot pays his own land travelling expenses. Contrary to the practice in the B.C. District, these do not form part of the general operating expenses of the service paid out of the Pilotage Fund in order to prorate them among all the pilots. The consequence of this system, which is a survival from the days of free enterprise, is that the amount referred to as the "take home pay" of the pilots is not, in fact, their exact net earnings. Since no record is being kept of the actual expenditures of the pilots on land transportation, it is not possible to calculate net figures. Land transportation expenses incurred by the Saint John pilots must be very small because the distance between the pilot station and the various harbour wharves is generally short and they usually have free transportation of one kind or another. This factor must, therefore, be taken into account when the remuneration of the Saint John District pilots is compared with the remuneration of the pilots in other Districts.

Taking the year 1962 as an example, the average remuneration per establishment pilot according to the various meanings given to the term is shown below (vide 1962 Financial Statement on p. 117). These average figures are somewhat smaller than the corresponding amount received by those pilots who are entitled to a full share from the pool. Generally speaking, all the pilots, except probationary pilots, receive exactly the same amount.

(a) *Pilot's share from the pool ("take home pay")—\$11,788.28*

In 1962, the amount remaining for distribution to pilots amounted to \$106,094.55 which, if shared equally between the nine pilots, would have made their share \$11,788.28. In fact, the seven pilots who were constantly available received \$12,245. One who was absent for some time received \$11,927.52, and one \$8,452.03 because he had a probationary licence for nine of the 12 months. As stated earlier, this amount includes whatever land transportation expenses each pilot incurred.

(b) *Pilot's share of the District net pilotage revenue less Pension Fund contribution—\$11,843.83*

In 1962, there was only one item of pilot group expenses paid out of the Pilotage Fund: "National Convention \$500". Whatever the pilots as a group decide to pay out of the pool for their own benefit and advantage is part of their remuneration.

(c) *Pilot's share of the pilotage dues (less pilot boat charges)—\$13,777.25*

The only item added here is the compulsory contribution to the Pension Fund which was then, and still is, 14 per cent of the District pilotage earnings, pilot boat charges excluded.

(d) *Pilot's share of the cost of the service—\$27,163.89*

If the pilots were considered private entrepreneurs, as they are supposed to be under the scheme of organization of Part VI C.S.A., the cost of operating the District should be borne by them in accordance with sec. 328 C.S.A. and, therefore, the cost of the District to the Government should be added to their gross income. Saint John is one of the Districts which receives the largest amount of direct and indirect Government assistance. In 1962, this amounted to \$104,000, i.e., 43 per cent of the total cost of pilotage for that District, making the total cost \$244,475 (vide Part I, p. 640). If the pilots were considered independent contractors, their gross earnings received from shipping and the Government would amount to \$27,163.89 each.

A table prepared by the Department of Transport showing the pilots' earnings for the year 1962, in the various Districts where the Minister is the Pilotage Authority, quotes the "Earnings per pilot on strength" as \$13,983.89. This figure conveys the same information as in (c) above on the basis of dues earned.

The table hereunder shows the actual "take home pay" of the pilots, and the amounts of the average remuneration of each pilot according to the main different meanings given to the term for the year 1958/9-1967. The discrepancy in 1960 and 1961 figures between the actual and average "take home pay" is caused by the fact that an amount of \$10,166.08 from the 1961 earnings was shared among the pilots in their 1960 "take home pay". This was no doubt occasioned by the recent change for accounting purposes from the fiscal year to the calendar year.

Year	Number of Pilots	Actual "Take Home Pay" ^b	Establishment of Pilots	Share per Establishment Pilot ^a		
				Average "Take Home Pay" ^c	District Pilotage Earnings on Collected Basis ^d	Total District Pilotage Cost ^e
1958/59	9	\$ 8,423.23	10	\$ 8,341.00	\$ 9,903.50	—
	1	7,600.90				
1959/60	8	11,124.34				
	1	2,610.98 ^f				
	1	997.72 ^g	9.18	10,087.52	11,958.88	—
1960	8	15,270.76	8	14,000.00	16,648.29	—
1961	8	12,979.24				
	1 ^h	1,550.00	8.2	14,091.46	16,576.46	\$31,108.17
1962	7	12,245.00				
	1	11,927.52				
	1 ^h	8,452.03	9	11,788.28	13,777.25	27,163.89
1963	9	11,395.00	9	11,395.00	13,493.63	29,246.22
1964	8	11,815.00				
	1	11,949.00 ⁱ				
	1 ^h	690.00	9	11,801.08	14,002.26	28,406.33
1965	8	12,425.00				
	1	474.79 ^j				
	1 ^h	8,253.89	9	11,961.54	14,110.49	28,517.33
1966	8	13,090.00				
	1	2,491.11 ⁱ	8	13,207.25	15,674.83 ^k	—
1967	8	12,900.00	8	12,900.00	15,048.06	—

^a *Establishment of Pilots* means the number of pilots on a yearly basis, taking into consideration any increase (i.e., probationary pilots) and any decrease (i.e., retirements, deaths, etc.) that occurred during the year.

^b Sources of information: 1958/59-1959/60—Exhibit 45; 1960-1967—Exhibit 1530(i).

^c Does not include gratuity.

^d Does not include pilot boat charges.

^e The consultant's study on which these figures are based covers only the five-year period 1961-1965 (vide PART I, *Appendix IX*, pp. 639-641).

^f Pilot retired September 27, 1959.

^g Pilot's licence cancelled by Minister of Transport June 3, 1959.

^h Probationary pilots.

ⁱ Including gratuity.

^j Gratuity.

^k Pilotage dues were raised 7½% on November 3, 1966.

COMMENTS

The foregoing table prompts the following remarks:

- (a) The Saint John pilotage service must be heavily subsidized if a high degree of efficiency is to be maintained and the pilots given adequate remuneration.
- (b) Care should be taken that the District is not overstaffed with pilots; first, because public money should not be spent to meet an operational deficit partly caused by an unnecessary number of pilots; secondly, if the present system of remunerating pilots is to be retained, the increase or decrease of one pilot has a substantial effect on the actual earnings of each pilot as a result of the small number who share in the pool. The reduction in strength by one at the end of 1965 was the main reason for the substantial increase in the pilots' remuneration in 1966. It could not have been affected by the increase in pilotage dues effective November 3 since sharing is based on dues collected. Furthermore, the number of ships piloted and the number of assignments were substantially the same and the increase in tonnage that occurred had no effect on earnings because voyage dues are based on draught alone.
- (c) Saint John is already in a vulnerable position on account of the trend to larger vessels which strain the physical capabilities of the port and care should be taken not to worsen the situation through excessive rates which would make the port financially unattractive as well. However, ways and means should be found to assure the pilots an adequate income commensurate with the increasing standard of qualifications they have to acquire and maintain.

Advantage should be taken of the facts that the Saint John pilotage service is seasonal and the pilot staff is over strength for eight months of the year.

It should be possible to make some of the Saint John pilots available for pilotage duties in areas where the pilotage season corresponds with the slack period in Saint John, e.g., Churchill and Goose Bay. The high degree of skill possessed by the Saint John pilots makes them ideal for waters where the required local knowledge can easily be acquired after a short period of training on location. If the pilots retain the present status of *de facto* employees, it would appear that the best solution would be for the pilots appointed to such small Districts to receive, either through direct salaries or through pilotage dues, a net remuneration substantially higher than the remuneration they would have received from the pool in their District during that period. These pilots would be detached from their District for the period in question and, therefore, would not be entitled to participate in the Saint

John District pool, the earnings of which would be shared between the remaining pilots thereby substantially increasing their remuneration for the summer months. To make the operation of the pool equitable it will be necessary to operate it as in the B.C. District on an earned basis and not as now on a collected basis (vide p. 128). If the pilots become employees of their Pilotage authority, there should be no problem as long as sufficient pecuniary incentive is provided in view of the financial control exercisable by the Central Authority (vide Part I, General Recommendation 21).

In 1965, a new deep-water berth called Dorchester Cape was built at Cole Head at the eastern entrance of the Memramcook River in Shepody Bay, 82 miles east of Saint John. In a letter dated December 3, 1965, the Saint John pilots protested that the first ship to call there had been piloted by the local D.O.T. light inspector at the request of the Department. They urged that no new Pilotage District be created but that pilotage services at Dorchester Cape be made their responsibility. Their request was agreed to but there was little traffic (one pilotage inward and outward a year). The wharf is now inaccessible for deep-sea vessels and its future is in doubt on account of extremely rapid silting. The chemical tanker *Joseph P. Grace* was piloted in May 29, 1967, at high tide by the Saint John pilot R. V. Cobham but was forced to return to sea without discharging after soundings carried out at the pilot's suggestion revealed that when the 35-foot tide ebbed there would be insufficient water for the ship to remain afloat at the berth (Ex. 1530(k)).

This is not the type of pilotage that should be reserved exclusively for the Saint John pilots because service is likely to be requested at any time of year, thus affecting the pilots' availability in Saint John Harbour during the winter months. The attitude to be taken in such cases depends upon the extent of service required, whether a local pilot is available and whether a Saint John pilot can be spared. This subject is dealt with in the Commission's General Recommendation 8 (vide Part I, p. 478, last para., and p. 479, first para.) and also General Recommendation 10 (pp. 482 and ff.). If the traffic consists of isolated voyages (as has been the case so far) and no local pilot is available, there is no objection if the Saint John pilots undertake these assignments provided the Pilotage Authority is satisfied that the efficiency of the pilotage service in Saint John will not be adversely affected. Such assignments should always be given to the same pilots and they should be required to acquire the necessary local, up-to-date knowledge on their own initiative. The rates for such services should either be fixed by regulation or be treated as cases of exception to be arranged between the ship concerned and the Pilotage Authority. While the latter alternative is not permissible at the present time, it will become so if the Commission's General Recommendations are implemented.

(2) TARIFF

The tariff structure has never been changed since it was established by the regulations of the City of Saint John before Confederation. The rates for pilotage trips inward and outward have always been based on draught alone and movages always on a scale based on tonnage alone. Both tariff and financial details were altered from time to time to meet changing situations. A special draught rate was added when steamships came into service and the rate for sailing ships was deleted later when they passed out of service. Other items were gradually added to meet new requirements, such as compass adjustments and trial trips, and to follow the practice in other Districts, detention and cancellation. Also in recent years, a pilot boat charge was added at the request of Treasury Board. Rates were often increased to provide more revenue either by providing specifically for new ones or by the device of imposing a surcharge, e.g., the most recent adjustment, P.C. 1966-2092 dated Nov. 3, 1966, imposed a $7\frac{1}{2}\%$ increase on all pilotage charges. In the depression years the reverse process was used as an incentive to shipping.

As in all other Districts, a provision of the By-law (subsec. 6 (1)) makes the tariff applicable to all vessels. As pointed out in Part I, pp. 213 and ff., such a provision is at present ultra vires in so far as it purports to apply to vessels that are not ships and, hence, do not come under Part VI of the Act.

The table on p. 121 shows the various items of tariff grouped as for the B.C. District (vide Part II, p. 146) on an earned basis for the years 1962 and 1967, and the relative importance of each is shown as a percentage of the total earnings derived from the tariff (not counting the pilot boat charges). For complete financial statement for the years 1962 and 1967 see pp. 130 and 131.

(A) *Pilotage Voyage Charges*

(a) *Basic Rates*

Voyage (also called trip) charges account for practically all the pilots' gross earnings (95.3% in 1962 and 96.4% in 1967). The voyage charge rate is a uniform \$4 per foot of draught. Since the abolition of the boarding district system in 1920, the rate has not differentiated between inward and outward voyages (except for sailing ships) and the price unit has not varied substantially. The 1920 rate of \$3 per foot draught was raised to \$3.30 in 1948 and \$4 in 1957. This rate has been affected from time to time by a percentage surcharge or percentage reduction. Since 1966, the present \$4 per foot draught has been subject to a $7\frac{1}{2}\%$ per cent surcharge like other pilotage dues.

Pilotage Dues		1962		1967	
		\$	%	\$	%
(A) VOYAGES					
Basic Rates.....		119,725.00	95.33	114,566.80	96.40
Additional Charges					
dead ship.....	*	—	—	*	—
quarantine.....	nil	—	—	nil	—
		119,725.00	95.33	114,566.80	96.40
(B) OTHER SERVICES					
Movages.....		5,364.00	4.27	3,595.69	3.03
Compass Adjustment.....		84.00	0.07	150.50	0.13
Trial Trips.....		244.00	0.20	305.02	0.25
		5,692.00	4.54	4,051.21	3.41
(C) INDEMNITY CHARGES					
Detention.....		93.00	0.07	131.15	0.11
Cancellation.....		75.00	0.06	96.84	0.08
Overcarriage (sec. 359 C.S.A.)..		nil	—	nil	—
Quarantine (sec. 360 C.S.A.)....		nil	—	nil	—
		168.00	0.13	227.99	0.19
(D) SURCHARGE.....		nil	—	(vide p. 127)	
TOTAL DUES BELONGING TO PILOTS..		125,585.00	100.00	118,846.00	100.00
ACCESSORY SERVICES					
Pilot Boat.....		14,890.00		12,810.00	
GRAND TOTAL.....		140,475.00		131,656.00	

*The 50% surcharge on dead ships is not segregated.

SOURCE OF INFORMATION: Exhibit 45.

For the past 50 years, Saint John has differed from other Districts by using draught alone to compute the voyage charge. There has been no complaint by the shipping interests nor by the pilots who are satisfied except for one recent exception regarding crude oil tankers (supertankers).

In the summary of conclusions in their brief, the pilots state that "the calculation of inward and outward pilotage dues on the basis of draught is satisfactory and particularly suited to the conditions of the Port of Saint John". Some years ago the Department of Transport offered to work out a new tariff based on both draught and tonnage, anticipating developments in the construction of larger ships without a commensurate increase in draught. The pilots declined the offer, preferring to leave the tariff based on draught alone. They argue that, since tides and currents are the principal hazards in Saint John Harbour, draught has long been considered a better criterion than

tonnage for computing pilotage dues in that it compensates more adequately for the difficulties encountered. However, while still unwilling to depart from the system to which they have long been accustomed, the pilots could not avoid noting that the rate structure was far from equitable from the point of view of value for services rendered in all cases. The matter was brought home to them with the arrival of the so-called supertankers, for which they have requested a surcharge on the basis that these tankers are in a class by themselves since they are much more difficult to handle than large cargo vessels.

Oddly enough, the surcharge they have suggested is based on tonnage and not on draught which would be more consistent with the prevailing system. They have proposed a surcharge on crude oil tankers of 1¢ per ton for every net ton in excess of 8,000. They point out that even with the suggested surcharge the dues would still be lower than those payable in Halifax where the difficulties of pilotage are not comparable. The Saint John pilots claim that pilotage is far easier in Halifax where there is a straight course, abundant water, deep-water berths and ample space to manoeuvre. In addition, the currents can not compare with the very strong currents that prevail in Saint John Harbour.

On the other hand, the Irving interests argue that the mere fact that the dues would still be lower than those charged in Halifax does not give a true picture of the situation. The sole party affected would be the oil refinery and, in order to keep their costs competitive with those in Halifax, the extra expenses for transportation of finished products have to be considered since Saint John is at a disadvantage with Halifax in this regard. Even if this has nothing to do with pilotage, it is part of costing where everything has to be taken into account. They further argue that an increase in rates would be unfair to the industry that has done so much to help balance traffic throughout the year, and has also contributed to a substantial increase in pilots' earnings. The pilots agree that the establishment of the refinery has brought more work in the summer months when normally they had little to do and that it has increased their earnings. It is established that the Irving Oil Company Limited paid \$23,823 in pilotage dues and boat charges from October 1, 1961, to March 31, 1963, and the Kent Line Limited paid \$29,577.50, including boat charges, during the same period.

COMMENTS

The pilots' argument, based on their status as free *entrepreneurs*, has no validity for they are employees to all intents and purposes. The pilots' main concern is that a given tariff produces sufficient pilotage dues to provide them with an adequate annual income (vide Part I, C.6). Since 1920, the Saint John pilots have ceased to be private contractors.

Their tariff structure, primarily based on draught, is a relic of the past and there appears to be no valid reason why it should be retained. Before generally uniform tonnage rules were adopted by international agreements, a ship's draught was the only measurement factor common to all ships that was readily ascertainable and even when a tariff with variable items was adopted it was generally based on draught alone. This is clearly shown in the pre-Confederation legislation that governed the pilotage services in Canada at that time. It was not until 1854 that the United Kingdom established tonnage measurement rules which were gradually adopted in subsequent years by most leading maritime countries (vide Part I, pp. 165 and ff.). Tonnage measurement was adopted as a criterion mainly to provide a common denominator to assess equitably the various port charges levied on vessels. As it acquired international acceptance it was also adopted as a basis for assessing pilotage dues and applied either in combination with draught or, in many Pilotage Districts, in place of draught.

The Commission has expressed the opinion that draught as a general and abstract means of assessing dues is no longer acceptable (Part I, pp. 161 and ff.). It might still be used as one of the components in the computation of dues for exceptional cases where, on account of the limited depth of water, the draught of a ship substantially increases the difficulty of navigation. In Saint John Harbour this is a common occurrence and will become more so with the trend to larger ships.

However, the main purpose of a sound pilotage tariff is to pro-rate as equitably as possible among the users of the service that part of the cost paid by shipping. In the Commission's view this objective is achieved by using maximum gross tonnage alone (vide Part I, C.6).

The pilots' recommendation for a surcharge on crude oil tankers exceeding 8,000 N.R.T. will lose its purpose in the near future, since the larger tankers will be unable to enter Courtenay Bay and, according to the latest information, will be destined for a new site especially constructed for them at Lorneville, N.B., situated on the south shore near Saint John.

(b) *Additional Charges*

The only additional charge in the tariff is "for the pilotage or movage of a dead ship". As in most Districts, it calls for one and a half times the charges prescribed in the main tariff. Only on very rare occasions are dead ships piloted inward or outward but they are moved within the harbour some 20 to 30 times a year. It has not been the practice in Saint John to segregate the charges for dead ships, with the result that the dues so collected are incorporated in the aggregate amount of voyage charges or movages as the case may be (Ex. 1530 (f)).

Curiously enough, negotiating the Reversing Falls does not call for a special charge. Normally, an additional charge should be provided to cover this exceptional service in the same way as a special charge is provided for

proceeding through the Second Narrows in Vancouver Harbour and transiting the Westminster railway bridge in the New Westminster District.

The tariff provides for such a service only when it occurs during a moveage and, as will be seen later, does not cover all cases. Because of the restricted meaning given to the term "moveage" by the By-law (subsec. 2(g)), no tariff is provided to cover such a service when performed during a ship's movement that does not fall within the regulation definition of moveage. Therefore,

- (a) the same voyage charge applies whether or not the voyage's point of origin or destination in the harbour is above or below the Falls;
- (b) no specific tariff is provided for transiting the Falls if it is the only service requested from the pilot, as may occur in the case of an exempt ship that enters the port and proceeds to a point above the Falls or when leaving the port from a point above the Falls. The fact that the pilot boarded and disembarked within the harbour, or that the ship was required to anchor in the harbour, or to go to a berth for the sole purpose of embarking or disembarking the pilot would not make that part of the ship's voyage a moveage. Also, the fact that in such a case the pilot boarded or disembarked in the District boarding area does not make the ship liable to pay a voyage charge if the pilot's services were only retained for the Falls transit and no other use was made of his services.

(B) Other Services

In addition to pilotage voyages, the tariff prescribes rates for other pilotage services, i.e.,

- (a) moveages;
- (b) compass adjustments;
- (c) trial trips.

(a) *Movages*. Although revenue from this source is small compared with pilotage voyages, the sum derived is second in importance. It accounted for 4.3 per cent of total earnings in 1962 and 3.0 per cent in 1967. Dues from pilotage voyages and moveages account for nearly 100 per cent of pilotage earnings (excluding pilot boat charges).

The tariff provides various moveage rates in which distance and ship's size are governing factors. The structure of the moveage charge is based on the three geographical divisions of the District (pp. 59-63) i.e., Courtenay Bay, the main harbour, and the Falls and above.

- (i) A moveage restricted to either the main harbour or Courtenay Bay calls for the smaller charge in accordance with a scale based on tonnage, with rates varying from \$12 to \$20.

- (ii) A movage from the main harbour to any place above the Falls calls for a uniform flat charge of \$30.
- (iii) A movage other than as described in (i) or (ii) calls for a charge also based on a tonnage scale varying from \$15 to \$35.

The basic structure of the movage charges dates from 1953 (P.C. 1953-1667, Ex. 1460 (x12)), prior to which a single scale based on tonnage applied to all movages. The present rates, fixed in 1957, have not been increased since except by the general surcharge in 1966.

Here again, there are uncertainties due to the wording of the section regarding the charge to be made for movages involving a transit of the Falls. If the place of origin or destination is the main harbour, it is \$30 irrespective of the vessel's tonnage but, if the place of origin or destination is Courtenay Bay, it falls into the third category as a movage "other than as described in paragraph (i) or (ii)" with the result that, if the vessel is under 1,000 tons, the charge is only \$15 for a longer movage. According to the rules of interpretation of statutes, this is the only possible interpretation since it follows strictly the letter of the By-law provision as it reads now and, furthermore, is the only inference that can be drawn from the amendment made in 1965 (P.C. 1965-1267). Prior to the change, the third category applied to movages "from the main harbour to Courtenay Bay or vice versa", with the result that a movage between Courtenay Bay and a point above the Falls was not covered in the tariff. This was rectified by replacing the governing sentence quoted above with a provision covering all cases not already taken care of, of which the main one was obviously a movage between Courtenay Bay and a point above the Falls. The result is that it would cost less for a small ship to depart from Courtenay Bay for a movage above the Falls than from the main harbour. This inconsistency should be corrected.

(b) *Compass adjustments and trial trips* call for special rates. The activities of the drydock and shipyard located at Courtenay Bay occasionally call for these special services. In 1962, there were three compass adjustments and ten trial trips; in 1967, ten compass adjustments and nine trial trips. The revenue derived from the source is very small, amounting to 0.27% of the pilots' earnings in 1962, and 0.43% in 1967.

The tariff distinguishes between these services according to whether they are performed within or beyond the limits of the District. If they are carried out within the District, there is an invariable flat charge for each service, i.e., \$14 for compass adjustments and \$20 for trial trips, or a combined charge of \$25 if both are effected at the same time.

The text of the governing subsection is difficult to understand because its construction is defective. It reads as follows:

- "5. The dues payable for compass adjusting and trial trips are as follows:
- (a) within the District
 - (i) during compass adjustment \$14.00
 - (ii) during trial trips \$20.00
 - (iii) during combined compass adjustment and trial trips \$25.00"

It would appear from the wording that these charges are to be made in addition to a movage charge for piloting the ship, since the ship's movement is within the District limits.

The origin of this phraseology can be found in the 1934 General By-law where the governing paragraph in sec. 3 read as follows:

"The charges for the services of a pilot shall be \$10.00 while compasses are being adjusted, \$15.00 for trial trips and \$20 for trial trips if compasses are being adjusted at the same time; these charges to be in addition to the charge for movage . . ."

When the present text was adopted in 1957, the same wording was kept but the last part of the provision regarding the movage charge was dropped. It must, therefore, be concluded that the legislating authority had decided by making the amendment that the movage charge should not be made in addition. The result is an ambiguous text which should be given the interpretation most favourable to the debtor. This interpretation is also supported by the fact that in the next subsection the applicability of the voyage charge is specifically mentioned as well. However, the defective wording has not caused any difficulty since, in practice, these services are never associated with a movage but always are performed when vessels are proceeding to or coming from sea (Ex. 1530(g)). If this section is retained, the text should be corrected but if it plays no useful rôle it should be deleted.

The tariff also provides in subsec. 5 (b) for a rate when compass adjusting or trial trips are performed "beyond the limits of the District". The charge is based on the time factor. This is quite logical because time is the real criterion here. This charge is in addition to the regular outward and inward pilotage charges.

The objection to this subsection is that it is *ultra vires*, since the Pilotage Authority has no power to fix rates for services performed outside the District. A Pilotage Authority's rate-fixing power extends only "within its district" (vide preamble to sec. 329 and subsec. 329 (h) C.S.A.) and a pilot ceases to be a licensed pilot when piloting "beyond the limits for which he is qualified by his licence" (subsec. 333(3)).

However, it is considered that this is an anomaly of the present legislation and that a Pilotage Authority should have the power to fix the rates for

services rendered by its pilots beyond the District when these are related to a pilotage trip originating from or terminating within its limits (vide Part I, Rec. 11, p. 491).

(c) *Indemnity Charges*

The By-law provides for three types of indemnity charges:

- (a) detention;
- (b) cancellation;
- (c) quarantine.

The *detention* clause of the tariff (Schedule, sec. 7) is both legal and realistic. It applies only when a pilot's availability is retained for a ship's convenience and not due to causes beyond the ship's control, e.g., stress of weather, or by order of the port or quarantine authorities. Because of the tidal conditions in Saint John, this provision is seldom used. Departure time is set by the assigned pilot and, if there is a delay and the tide is lost, departure is postponed until the next tide. For definition of the legal situation with respect to detention charges, vide Part II, pp. 157 and 158.

The same principle and comment apply to *cancellation*.

Quarantine charges pose only a theoretical problem since none have been levied in the past several years (Ex. 1530(f)). This charge is illegal because the question is already dealt with in sec. 360 C.S.A. The fact that a pilot may be detained in quarantine a few hours only and not a number of days does not change the situation. Furthermore, as pointed out when this question was studied in the B.C. District (Part II, pp. 152-155), quarantine inspection is a matter over which vessels have no control and, therefore, it should be considered one of the hazards of pilotage for which there should be no extra pilotage charge.

(D) *Surcharge*

In 1966 (P.C. 1966-2092 dated November 3, 1966) a general surcharge of $7\frac{1}{2}$ per cent was imposed "on all pilotage charges".

The term "pilotage charges" is not defined and there is no reason to believe that it is not synonymous with "pilotage dues". Therefore, the surcharge should be applied to all items of the tariff. However, it is apparent from the analysis of the 1967 revenues that it was not applied to the pilot boat charges. The accrued revenue yielded by the surcharge has been added to the yield of each tariff item and not segregated. This method of accounting, which gives a better picture of the yield of each tariff item, explains the uneven amount of all the various items of revenue for 1967, except pilot boat charges.

7. FINANCIAL ADMINISTRATION

(1) SAINT JOHN PILOTAGE FUND

The Saint John Pilotage District is by regulation a financially independent, self-accounting unit and is treated as such (re legality of the system, vide Part I, C.5). The Supervisor of Pilots is responsible for financial administration, including handling all money received by or on behalf of the Authority which, according to the By-law, forms the Saint John Pilotage Fund.

He makes out pilotage invoices from information contained in the pilots' source forms and collects pilotage dues. He has had no difficulty collecting dues and since 1951 there has been only one unpaid account, amounting to \$18.15, which was written off as a bad debt on the annual report of 1960.

Pilotage earnings are pooled and, after pension contributions and certain expenses are paid at the request of the pilots as a group, the balance of the pilotage earnings is divided equally among the pilots according to their availability for duty, probationary pilots receiving only a partial share (p. 72). The pool is shared according to a simplified procedure, i.e., on the basis of cash on hand and not on an "as earned basis" as is the practice in the B.C. District (vide Part II, pp. 185 and 186). Since the pilots' sharing rights are based on the extent of their availability during the month when the dues were collected and not during the month when they were earned, a retiring pilot ceases to retain any right to share revenue collected after the expiration of the month his retirement takes place, and his right to share in the full month's collection is limited to the number of days he was available for duty during that month prior to his retirement.

According to the By-law, pilots may be on sick leave with full pay, half pay and without pay but, in practice, when a pilot is ill he is normally kept on full pay.

According to the By-law requirements, the Supervisor of Pilots disposes of all the pilotage money that has accumulated in the Pilotage Fund at the end of each month. Monthly statements are made and sent to the pilots and the Pilotage Authority in Ottawa with two copies to the Chief Treasury Officer.

In addition, at the end of each calendar year, an annual financial statement is prepared on the basis of cash assets and liabilities. The Pilotage Authority does not possess any physical assets since all its equipment is provided free of charge by the Department of Transport. Therefore, the annual statement shows the items of cash on hand at the beginning and end of the year, i.e., the amounts not distributed, as well as any outstanding pilotage bills. It does not contain an "accounts payable" item because the undistributed amount can not be shared until all liabilities have been met.

It becomes obvious that the annual financial statement does not provide a complete accounting of the Pilotage Fund but is merely a financial state-

ment of that part of it which directly concerns the pilots, i.e., from which the pool is derived. Except for pilotage dues collected as pilot boat charges, it contains no items of revenue that do not form part of the pool. Although, as in other Districts, there must be other incidental receipts and expenditures, such as monies that may be collected for and on behalf of other Districts, and fees for examinations and licences which are generally made payable to the Receiver General, no such items appear in any of the past 12 annual financial statements analysed by the Commission. In fact, examination and licence fees have been collected, but these sums were paid directly to the Receiver General of Canada without any entry being made in the books of the Pilotage Authority. Therefore, the financial report is specifically limited to the financial transactions which concern pooling. This is considered an erroneous practice by the Ottawa Headquarters and instructions have now been issued that all transactions relating to pilotage are to be recorded (vide D.O.T. letter dated August 14, 1968, Ex. 1530(e)). The pilot boat charges also appear in the report (no doubt because the cost of pilot boat service was previously paid out of pilotage earnings), but, since they do not form part of the pool, they are accounted for in a separate statement and are not included in the gross earnings of the District. Therefore, in Saint John the term "Pilotage Fund" refers only to the gross earnings of the pool.

A comparative annual financial statement for the two years 1962 and 1967 is shown on pp. 130 and 131.

(A) *Assets and Items of Revenue*

In this field, the situation in Saint John is the same as in other Districts where the Minister is the Pilotage Authority (vide British Columbia, Part II, p. 174). As stated earlier, the Department of Transport assumes all operating costs as well as the deficit of the pilot vessel service. Therefore, in order to obtain a true financial picture of the cost of the pilotage service in Saint John, the cost to the Government should be added to the cost to shipping. At the request of this Commission, this complete financial statement was prepared, *inter alia*, for Saint John, by the Commission's accountant consultants (vide Part I, Appendix IX, pp. 611 and ff.), for the years 1961 to 1965. This study is made on the basis of pilotage dues earned, which accounts for the slight difference in the figures quoted. The \$125,585 earnings shown in the District financial statement for 1962 (p. 130) account for only 57 per cent of the total cost of pilotage; the other 43 per cent, i.e., \$104,000, being the share of the direct and indirect subsidies received by the District from the Government, composed of \$11,825 (5% of the cost of administration) administrative expenses and \$92,175 (38% of the cost of administration) the deficit on the pilot vessel service. The total cost of the pilotage service for that year was \$244,475.

COMPARATIVE ANALYSIS OF ANNUAL FINANCIAL STATEMENTS*
OF THE PILOTAGE DISTRICT OF SAINT JOHN, N.B.

	1962			1967**		
ASSETS						
(A) PILOTAGE DUES						
(1) <i>Belonging to the Pool</i>						
Earned—Saint John.....	\$125,585.00	90.6%		\$118,341.00	88.7%	89.1%
Earned—Dorchester Cape.....	nil	—		505.00	.4	
			\$125,585.00			\$118,846.00
Plus outstanding as at Jan. 1.....	9,484.50	6.8		12,746.32	9.6	1.1
Less outstanding as at Dec. 31.....	(11,081.50)	(8.0)		(11,255.86)	(8.5)	
Total collected.....			123,988.00			120,336.46
(2) <i>Pilot Boat Charges</i>						
Earned.....			14,890.00			12,810.00
Plus outstanding as at Jan. 1.....	1,130.00	.9		1,350.00	1.0	9.6
Less outstanding as at Dec. 31.....	(1,320.00)	(1.0)	(190.00)	(1,150.00)	(.9)	.1
Total collected.....			14,700.00			13,010.00
(B) MISCELLANEOUS						
(1) <i>Indemnities (secs. 359-360 C.S.A.)</i>	nil	—		nil	—	
(2) <i>Collected for pilots</i>	nil	—		nil	—	
(3) <i>Accounting</i>						
Credit adjustments.....	nil	—		nil	—	
Balance on hand as at Jan. 1.....	7.25	.0	7.25	48.04	.1	48.04
			\$138,695.25			\$133,394.50
			100.0%			100.0%

[illegible]

*Source of information: Ex. 45.

**The 7½ surcharge was not segregated and is included in each item.

That part of the Pilotage Fund which is covered in the annual financial statement consists of the following items:

- (a) Pilotage dues, i.e., all items listed and defined in the tariff which were studied earlier (pp. 120 and ff.) including dues paid on account of the compulsory payment system and charges for accessory services. In 1962 and 1967, they accounted for all pilotage receipts.
- (b) Miscellaneous revenues comprising:
 - (i) overcarriage and quarantine indemnities (secs. 359 and 360 C.S.A.). Pursuant to subsec. 9(7) of the Saint John By-law, these are to be collected by the Supervisor and form part of the pilots' pool. This provision is illegal because it is ultra vires on the part of the Pilotage Authority to deal by regulation with the cases contemplated in secs. 359 and 360 C.S.A., either to alter the indemnity or to modify the personal rights of a pilot to these indemnities (Part I, pp. 201 to 203). To provide for these situations would require an amendment to the Act (vide Part I, Recommendation 11, pp. 490 and 491 re *overcarriage indemnity*). This is a new provision which was added when the 1961 By-law was sanctioned. To date, it has not yet been applied;
 - (ii) monies collected for the pilots as a personal service to them without any legislative obligation. In the 1966 report, there is such an item which was kept segregated as a separate financial statement, i.e., \$26 representing the pilots' expenses for providing pilotage services to Dorchester Cape;
 - (iii) items which are not true receipts but are entered as such for bookkeeping purposes only. No such entries appear on any of the Saint John financial statements. However, because the statement is based on cash assets and liabilities the balance of the pool money from the preceding year that remained undivided after final sharing is entered under this heading. In 1962, it amounted to \$7.25 and in 1967 to \$48.04. These are very small amounts but, according to the rules for sharing the pool contained in the By-law, only that part of the fund which can not be mathematically divided should remain and be carried over into the next year. This amount should never be more than a few cents.

(B) *Liabilities and Items of Expenditure*

Since the Saint John financial statement shows only money belonging to the pool, expenditures on behalf of third parties are not included.

Because all liabilities must be settled before the pool is shared there is no mention of "outstanding accounts", either at the beginning or end of the

year. All liabilities are actual expenditures and are shown as such. However, such a system could not be followed when the pilot boat service was provided and operated by the Pilotage Authority. Although the practice was neither authorized nor foreseen in the C.S.A. or covered in the District By-law, capital expenditures were pro-rated for a number of years with the assistance of the Department of Transport which periodically granted the Authority special interest-free loans to finance them. The Authority reimbursed these loans over a period of years in accordance with an agreement. This procedure became necessary to meet a situation unforeseen in the Act resulting from the Pilotage Authority assuming control of the pilotage service in 1920.

The items of expenditures may be grouped as follows:

- (a) District and service operating expenses;
- (b) money paid to or on behalf of the pilots;
- (c) miscellaneous, i.e., bookkeeping entries showing unshared balance of the pool at the end of the year.

(a) *District and Service Operating Expenses*

District and service operating expenses are now restricted to pilotage dues collected in the form of "pilot boat charges", which subsec. 9(2)(c) of the By-law makes payable to the Receiver General of Canada. This, in fact, is the cost to the pilots of the pilot vessel service, provided them by the Government which absorbs the operating deficit, if any.

There is no other item of expenditure under this heading, because all other District and service operating expenses are assumed by the Crown.

Subsec. 9(2)(b) of the By-law makes accounts rendered by pilots for expenses incurred in the course of their duties payable from the Pilotage Fund, provided they are approved by the Pilots' Committee and the Supervisor. This appears to be a stereotyped provision included in most By-laws drafted in Ottawa for Districts where the Minister is the Pilotage Authority. However, the practice in this District does not follow the By-law. No pilot is reimbursed for expenses incurred locally and no accounting is made of out-of-pocket expenses incurred proceeding to or from an assignment. Generally, the pilots reach ships in the harbour in the pilot vessel or tugs and travel to wharves in private cars or taxis. These out-of-pocket expenses are disregarded by the pilots as unimportant.

(b) *Monies Paid to or on behalf of the Pilots*

These disbursements can be grouped in three categories:

- (i) pilots' group expenses;
- (ii) pension contributions;
- (iii) monies paid directly to the pilots, i.e., their share of the pool.

The pilots' Pension Fund contribution is now set by the mutual consent of the Pilots' Committee and the Authority at 14 per cent of the pilots' gross earnings (not counting pilot boat charges) (vide p. 136). It is made a first charge against the pool and is strictly applied.

If the By-law provisions governing the disposal of the pool were strictly observed, any money left in the pool would not be disposed of by the Supervisor in any other way than by actually sharing it among the pilots. However, Saint John is like most Districts where the pool is administered by the Pilotage Authority in that the local representative accommodates the pilots by pro-rating their group expenses by the simple procedure of payment from the pool. A Secretary or Supervisor who does so engages his personal liability because such action should not be taken without the unanimous consent of all the pilots. Under the present legislation, not even the Pilots' Committee has the power to take a decision affecting a pilot's earnings without his consent. The Saint John pilots are comparatively small in number and are not grouped in any organization except through their Pilots' Committee which generally decides expenses of this nature—presumably with the pilots' knowledge and consent. Up to 1959, this procedure was frequently used but very seldom since then because the Pilotage Authority expressed disapproval. By letter dated May 22, 1959, the Superintendent of Pilotage, Captain D. R. Jones, pointed out that the books of the Pilotage Authority were not to be used to record private transactions and gave instructions to discontinue the practice.

The Pilots' Committee has since resorted to a special fund consisting of donations from the pilots to cover group expenses for such items as floral tributes, Christmas cards and catering which up to that time had been entered as an aggregate amount under "expenses not refundable".

Items of this nature in recent annual reports are:

- (i) "National Convention". This item, which was formerly called "Pilots' expenses", defrays the expenses of the pilots' representative who attends the Annual General Meeting of the Canadian Merchant Service Guild to which all the Saint John pilots now belong on an individual basis. It does not appear in the 1967 statement because no General Meeting was held that year. In 1958/59, one pilot, who was not a member of the Guild, objected to this item with the result that it was shared among the other pilots.
- (ii) Gratuities to retiring pilots. In 1964 and 1965, the sums of \$949.58 and \$74.79 were paid to ex-pilot G.W. Miller and, in 1966, the sum of \$1,553.10 was paid to ex-pilot W.B. Alexander as a gratuity on retirement. This item was explained as follows by D.O.T. in a letter dated August 15, 1968:

"While there is no provision in the Saint John District General By-law supporting these payments the action was taken following requests, supported by the unanimous agreement of the remaining Saint John pilots, to do so. The amounts so paid were computed on the

basis of 50% of the average monthly amount paid during the preceding calendar year for a period of three months commencing on the date of retirement. It could be asserted that these payments should have been made by a private contribution from each of the pilots rather than through the books of the Authority, having in mind the fact that there was no provision in the by-law for such a payment. On the other hand, it was felt that an amendment to provide for it would have resulted in delay and as it was simpler and clearly to the pilots' personal advantage to put it through the pilotage books this course of action was decided upon.

As you remark, these gratuities are in addition to the pension to which retired pilots are entitled." (Ex. 1530(m).)

- (iii) Legal fees. This item used to be included in the general item "Expenses not refundable". It re-appeared in the financial statements covering the three year period from 1963 to 1965 when this Commission held its hearings to cover the pilots' expenses for legal advice, and their representation by legal counsel.

Contrary to the practice followed in the British Columbia District, no premiums for group insurance are paid in this way. It does not appear that the Saint John Pilots carry any such group insurance and, if so, it seems that they pay the premiums on an individual basis as they do for their Guild dues. (Vide remarks regarding the practice followed in the B.C. District, Part II, pp. 181 to 183.)

COMMENTS

Although the Minister is the Pilotage Authority in both the Saint John and the British Columbia Districts, there are substantial differences in their accounting procedure, disbursement rules and basis for sharing which can not be supported on the ground of any particular local requirement. The differences are even greater when compared to other Districts where the Minister is not the Pilotage Authority and whose financial statements give a true account of the Pilotage Fund but still not necessarily of the total cost of the service, depending whether such Districts receive direct or indirect financial help from the Government. These facts clearly indicate the necessity for a uniform accounting procedure. Because of all the basic differences in content and interpretation it could be very misleading to compare the financial statements of different Districts. (Vide General Recommendation 17, p. 508, item 15, and General Recommendation 20, pp. 522 and 523).

8. PENSION FUND

The Saint John Pension Fund was instituted in 1920 by the first By-law the Minister enacted after his appointment as Pilotage Authority, thus implementing one of the recommendations of the Robb Commission.

As in the other Districts where the Minister is the Pilotage Authority, this fund first provided for a fixed amount of pension per year of service

increasing periodically and continued until actuarial surveys showed it was heavily in deficit. From then on, repeated requests by the pilots for increased benefits were refused by the Pilotage Authority. After numerous discussions between the Pilots' Committee and the Pilotage Authority, a new plan was inaugurated in 1957. It is still in effect and is considered satisfactory by the pilots. Since 1957, the compulsory contribution has been fixed at 14 per cent of their gross earnings, 7 per cent to liquidate the actuarial deficit and 7 per cent to purchase annuities for each pilot on an individual basis in order to balance contributions with annual pensions credited. This new method was designed to avoid any deficit resulting from an imbalance between income and payments. As the pilots rightly pointed out in their brief, "in this manner, although each pilot's contribution in any given year is equal to all other pilots, the total contribution by a given pilot over his full years of service will not necessarily be the same as any other pilot, but his pension bears a direct relationship to the amounts which he has contributed, without any maximum".

The 1957 reorganization produced the expected result: the actuarial deficit has been wiped out. This was proved by the actuarial evaluation conducted by the Department of Insurance as of December 31, 1963, which, on the basis of $3\frac{1}{2}$ per cent interest, showed an actuarial surplus of \$898. The evaluation carried out at this Commission's request (based on a yield of 4 per cent because the Commission's consultant found that the actual yield of the fund was slightly superior to 4 per cent) raised the actuarial surplus to \$50,733. He found that the book value of assets on December 31, 1963, not including accrued interest, amounted to \$282,783 against the then value of the total accrued actuarial liabilities of \$232,050.

In 1967, at the request of the Pilotage Authority and pursuant to sec. 40 of the District By-law, the Department of Insurance made a new valuation of the Fund as of December 31, 1966 (Ex. 1460 (nn)). It showed an excess of assets over liabilities of \$28,775. They pointed out, however, that bonds held were taken at par value although the market value at the time was substantially lower (some \$59,000).

COMMENTS

The legality of a pension fund under the present legislation and the Commission's opinion regarding the advisability of a Pilotage Authority creating and administering a pension fund are dealt with in Part I of the Report, C. 10, and in Recommendation 39. However, apart from these questions, if the existing pension scheme is to be retained, it should be modified since the actuarial deficit has been made good. Hence, either the compulsory contribution should be reduced by 7 per cent or the full 14 per cent contribution used to purchase annuities.

Chapter D

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE SAINT JOHN PILOTAGE DISTRICT

RECOMMENDATION No. 1

An Order to Be Made without Delay by the Governor in Council to Give Legal Existence to the Saint John Pilotage District

As demonstrated (pp. 28 and 29), the Saint John Pilotage District ceased to exist legally when the 1934 Canada Shipping Act came into force. Since an efficient pilotage service for the Harbour of Saint John is believed essential in the public interest, it is considered that immediate action should be taken to remedy the situation without waiting for the enactment of the recommended new pilotage statute.

Therefore, it is recommended that as a necessary interim measure the Governor in Council acting under sec. 324 C.S.A. make an order restoring legal existence to the Saint John Pilotage District.

RECOMMENDATION No. 2

The Northern Limit of the District to Be Relocated to Ex- clude the Reversing Falls and Their Immediate Approaches from the District; the Seaward Limit to Remain for the Time Being as Established in 1964

It has been established that for a number of years the only vessels navigating the Reversing Falls have belonged to a single private concern. It has also been established that, although these waters are part of the Saint John District, for a number of years the Saint John pilots have had very few opportunities to effect such transits and, thus, have been unable to maintain and improve their required *expertise* in effecting such difficult assignments. Therefore it would be presumptuous on the part of the Pilotage Authority to continue to assign the pilots on turn as occasion demands. Instead it should alternate such assignments between two selected pilots who, in

order to maintain their *expertise*, are required to find ways and means of performing a minimum number of transits each year.

It is considered such reorganization is unwarranted in the present circumstances since that part of the service has become private. Consequently, the northern boundary of the District on the Saint John River should be relocated downstream from the Falls in order to exclude them and their immediate approaches.

If the Falls were no longer within the District, it would be the responsibility of those using this part of the river to find qualified persons to navigate their vessels; the choice would be theirs alone. Without violating the law they would be entitled to have their employees act as pilots. Alternately, there would be no objection if they employed a District pilot of their choice who, during such employment, would be considered an unlicensed pilot since the Falls would be outside the District. However, he could be an "approved pilot" if General Recommendation No. 10 is implemented, Part I, p. 482 (subsec. 333(3) C.S.A.). All that would be required of the Pilotage Authority would be permission for the selected pilot to perform such duties outside the District. This permission should be granted except on the rare occasions when the selected pilot could not be made available for such extraneous employment on account of other exigencies of the service. It would follow that the Pilotage Authority would bear no responsibility whatsoever for the performance of this pilot or for his competence in navigating the Falls.

Because the status of District pilots will be either employees of the Authority or *de facto* employees, the Pilotage Authority will be obliged to obtain a waiver for its vicarious liability as employer if the dues for the pilot's services are to be paid either to the Crown or to the pool.

It appears that the seaward limit of the District is now satisfactory as a result of the 1964 modification (vide p. 30). However, this question must be reviewed by the Central Authority in the light of new requirements when the proposed Lorneville site is about to become operative, or the nature of the commercial operations above the Falls changes substantially.

RECOMMENDATION No. 3

Pilotage within the Main Harbour and Courtenay Bay to Be Classified as an Essential Public Service

Saint John Harbour is considered one of the most difficult harbours in Canada to navigate but it is a safe harbour when navigated by persons with the necessary local knowledge, as evidenced by its good accident record.

The Commission's Nautical Adviser, the late Captain J. S. Scott, commented in his report to the Commission:

"For my part, I consider Saint John the most challenging of all the Canadian major ports, requiring exceptional pilotage skill and no small order of personal fortitude".

A first class pilotage service is required to enhance both safety of navigation and the efficient operation of the port.

Access to the harbour is limited by channel depth, tidal currents and cross currents and by such variable factors as wind, fog and freshet. Larger vessels must be navigated by persons with an intimate knowledge of all these governing factors. Furthermore, the ever increasing size of most of the ships calling at Saint John is taxing its approaches to the limit and without highly qualified pilots the port would be physically inaccessible to most of the present ocean-going traffic.

In the interest of port efficiency during the peak season full advantage must be taken of the few hours before and after high tide during which the navigation of large vessels is safe. This requirement, together with the limited availability of tugs, makes the planning and co-ordination of ship movements essential, a task which demands the advice of the pilots who have an intimate knowledge of all the governing factors. Without such assistance, confusion and unnecessary, costly delays would reflect adversely on the harbour.

The efficiency of the port of Saint John is a matter of national importance, and public interest would be prejudiced if a major shipping casualty in one of the approach channels blocked access for a prolonged period. Therefore, it is considered that the pilotage service in the main harbour and in Courtenay Bay should be classified an essential public service.

In addition to the limitations discussed above, it should be noted that modern vessels are designed so that loading and unloading can be effected very quickly. Saint John may become too expensive for container vessels and crude oil tankers if the proper facilities are not available or if they are delayed in the harbour for many hours because they miss the daylight high tide.

Large crude oil tankers were a new problem in Saint John in 1963 and the pilots needed to gain experience. On this the Commission's Nautical Adviser remarked:

"Without undue optimism, I believe that the shock impact of having to handle supertankers in Courtenay Bay is wearing off and such transits will be considered as a day-to-day job in the near future".

However, there are limits to the expert's skill and ability. For instance, Courtenay Bay is being used to the full extent of its capacity and capability and longer and larger ships can hardly be handled without risk in its present state. When such a point is reached, limitations are to be expected, first, during adverse conditions and then, as ship dimensions increase, when it becomes hazardous and even impossible to bring such vessels in except under the

most favourable conditions. The end result is that, for all practical purposes, such an area is closed to larger vessels unless improvements are effected.

It would appear that the necessary capital and maintenance works required to make the harbour easily accessible to large modern ships are too costly and, therefore, such a solution is impracticable. The best hope lies in the creation of a new site, such as is being planned at Lorneville. Failing this, it may be expected that Saint John will gradually diminish in importance as a national port.

If Recommendation No. 2 is not implemented and the Reversing Falls and their approaches remain in the District, it is considered that, for the reasons mentioned in the previous Recommendations, pilotage in this area should be classified merely as a private service. The public in general will suffer no loss or inconvenience if pilots qualified for this assignment are unavailable or this part of the waterway is temporarily obstructed following a shipping casualty.

For the time being, no classification is required for the seaward approaches because they serve only as a boarding area. This question will have to be reviewed by the Central Authority in the light of new conditions and circumstances and the extent to which public interest is involved if the Lorneville site becomes operative.

Chapter E

APPENDICES

APPENDIX A

- (1) *Graph*—1958/59-1967 Per Cent Increase (or Decrease) in Earnings and Workload of Pilots in the Pilotage District of Saint John, N.B.
- (2) *Table*—1958/59-1967 Figures on which the above Graph is Based Giving: Ships Paying Pilotage—Number Inwards/Outwards, Total Assignments (Trips and Movages with and without pilots, D/F and Compass Adjustments, and Trial Trips), and Net Tonnage; District Gross Earnings; Distribution to Pilots; Establishment of Pilots; and Average "Take Home Pay".

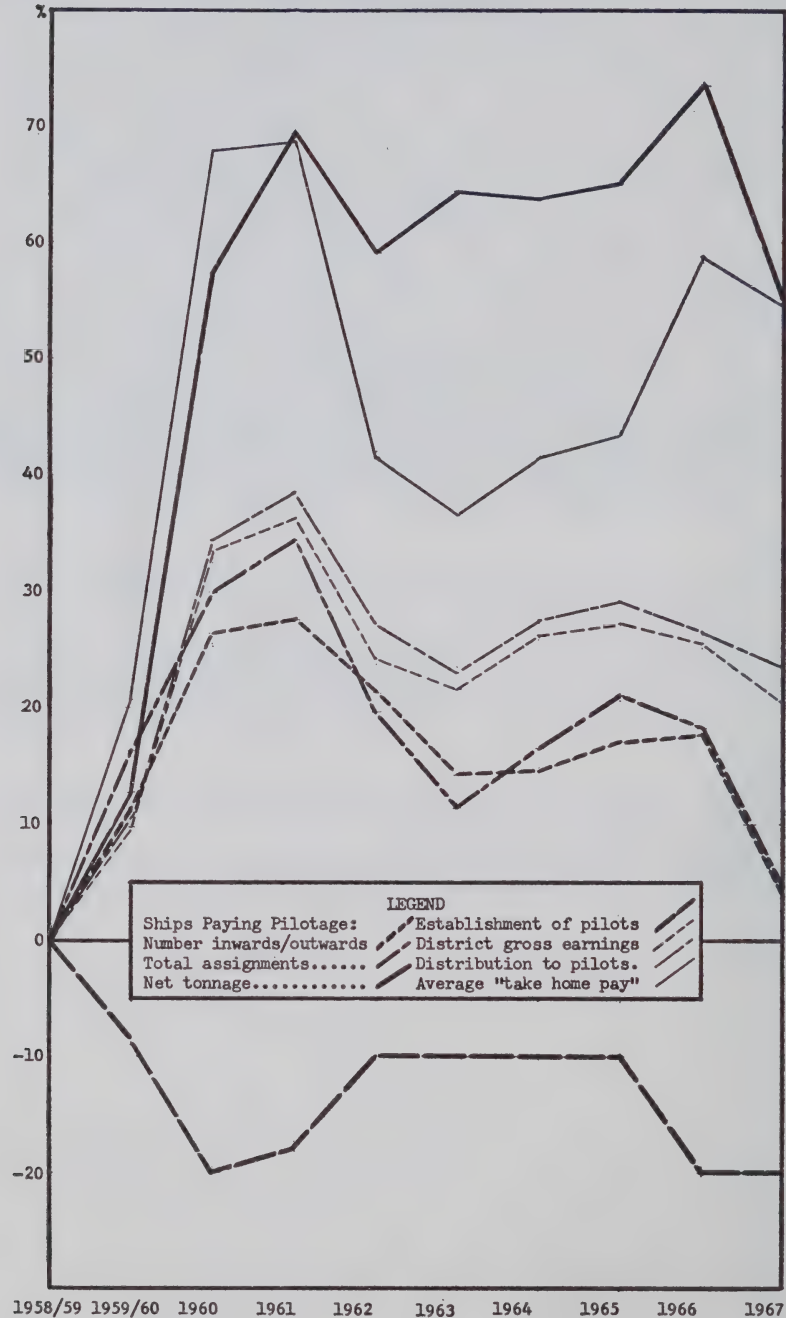
APPENDIX B

- (1) *Graph*—1959-1967 Comparison of Tankers Piloted to Total Vessels Piloted Arriving at Saint John, N.B. Each Month.
- (2) *Table*—1959-1967 Figures on which the above Graph is Based Giving: Monthly Traffic Arrivals Piloted at Saint John, N.B., for Ocean and Coastal Cargo; Miscellaneous (Ocean & Coastal Passenger, Naval, Government and other Non-Commercial vessels); Total Other Vessels; Ocean and Coastal Tankers; and Total All Vessels Listed.

APPENDIX C

- (1) *Table*—1958-1967 Shipping Casualties, Accidents and Incidents Involving Pilots of the Pilotage District of Saint John, N.B.
- (2) *Summary*—Shipping Casualties, Accidents and Incidents involving Pilots of the Pilotage District of Saint John, N.B., 1958-1967

Appendix A (1)
PER CENT INCREASE (OR DECREASE) IN EARNINGS AND
WORKLOAD OF PILOTS
In the Pilotage District of Saint John, N.B.



Appendix A (2)

EARNINGS AND WORKLOAD OF PILOTS

In the Pilotage District of Saint John, N.B.

Year	(1) Ships Paying Pilotage	(2) Ships Paying Pilotage	(3) Ships Paying Pilotage	(4)	(5)	(6)	(7)
	Number Inwards/ Outwards	Total Assign- ments	Net Tonnage	District Gross Earnings	Distribution to Pilots	Estab- lishment of Pilots	Average "Take Home Pay"
1958/59	1,237	1,460	3,621,535	\$ 99,903.50	\$ 83,409.97	10	\$ 8,341.00
1959/60	1,377	1,700	4,087,580	109,782.50	92,603.42	9.18	10,087.52
1960	1,562	1,896	5,701,155	133,186.32	112,000.00	8	14,000.00
1961	1,576	1,963	6,134,417	135,926.98	115,550.00	8.20	14,091.46
1962	1,499	1,747	5,759,618	123,995.25	106,094.55	9	11,788.28
1963	1,411	1,626	5,955,316	121,442.68	102,555.00	9	11,395.00
1964	1,417	1,701	5,925,320	126,020.38	106,209.75	9*	11,801.08
1965	1,447	1,768	5,975,187	126,994.38	107,653.89	9**	11,961.54
1966	1,456†	1,725‡	6,279,218‡	125,398.60†	105,658.01	8	13,207.25
1967	1,286‡	1,521‡	5,615,121‡	120,384.50†	103,200.00	8	12,900.00
<i>Per Cent Increase or Decrease</i>							
1958/59	.0	.0	.0	.0	.0	.0	.0
1959/60	11.3	16.4	12.9	9.9	11.0	-8.2	20.9
1960	26.3	30.0	57.4	33.3	34.3	-20.0	67.9
1961	27.4	34.5	69.4	36.1	38.5	-18.0	68.9
1962	21.2	19.7	59.0	24.1	27.2	-10.0	41.3
1963	14.1	11.4	64.4	21.6	23.0	-10.0	36.6
1964	14.6	16.5	63.6	26.1	27.3	-10.0	41.5
1965	17.0	21.1	65.0	27.1	29.1	-10.0	43.4
1966	17.7	18.2	73.4	25.5	26.7	-20.0	58.3
1967	4.0	4.2	55.1	20.5	23.7	-20.0	54.7

SOURCES OF INFORMATION:

- (1) Ex. 45 — *Return of Vessels Paying Pilotage (Inward and Outward totalled).*
- (2) Ex. 45 — *Trips and Movages with and without pilots, D/F and Compass Adjustments, and Trial Trips*
- (3) Ex. 45 — *Return of Vessels Paying Pilotage.*
- (4) Ex. 45 — *Receipts and Disbursements* (on collected basis; excludes pilot boat charges).
- (5) Ex. 45 — *Receipts and Disbursements* (excludes payment to Pension Fund).
- (6) Ex. 45 — *Establishment of Pilots* means the number of pilots on a yearly basis, taking into consideration any increase (i.e., probationary pilots) and any decrease (i.e., retirements, deaths, etc.) that occurred during the year.
- (7) *Per Establishment Pilot.*

*Although it was reported that "one pilot retired and one probationary pilot commenced duties during the year", no actual dates were cited and it had to be presumed that they occurred concurrently.

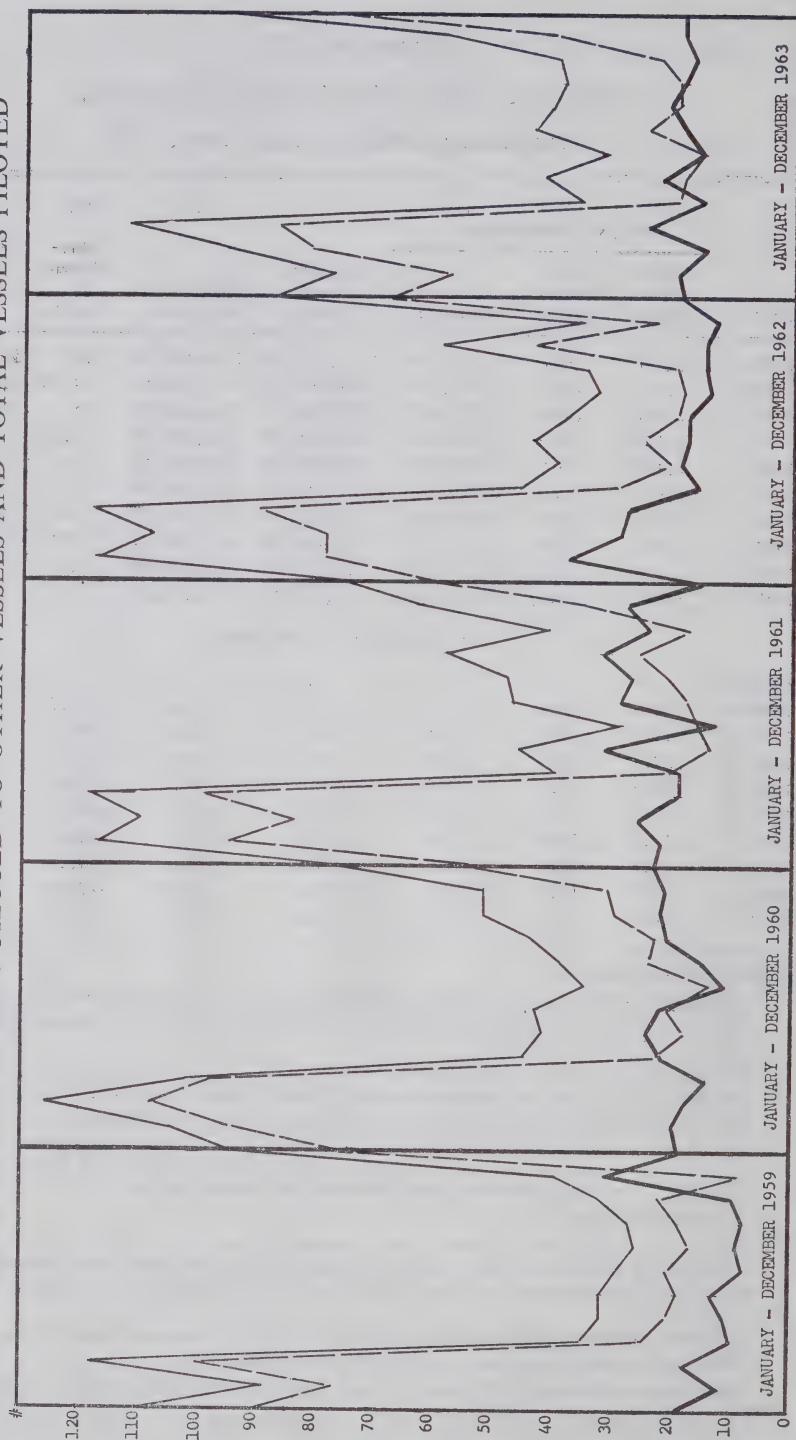
**One pilot retired on December 31, which does not affect the *establishment* figure.

‡Includes *one* inward and *one* outward trip at Dorchester Cape.

†Includes a surcharge of 7½% on all pilotage dues which was put into effect on November 3, 1966.

Appendix B (1)

NUMBER OF ARRIVALS AT SAINT JOHN, N.B. MONTHLY DURING 1959-1967 SHOWING THE COMPARISON OF TANKERS PILOTED TO OTHER VESSELS AND TOTAL VESSELS PILOTED



LEGEND:

— Total all piloted vessels arriving at Saint John

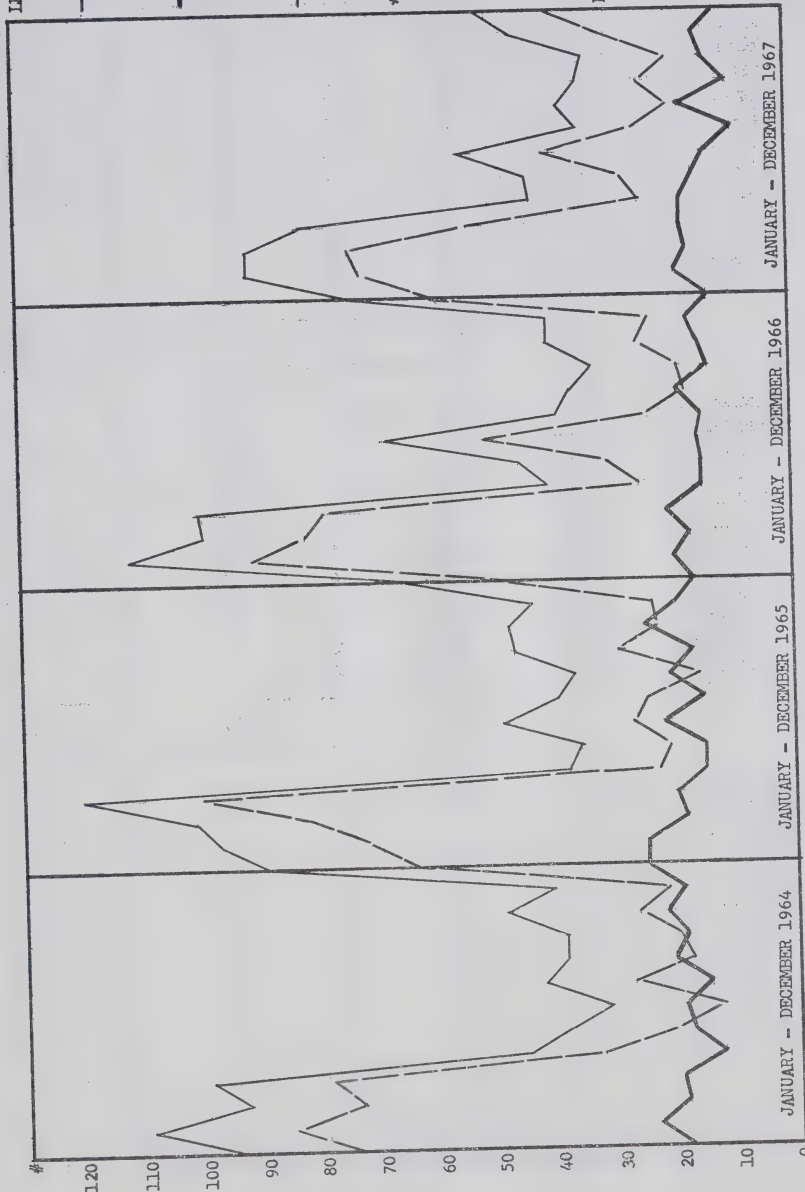
— Number of tankers (ocean and coastal) piloted inwards each month

— Number of other vessels* piloted inwards each month

* Ocean and coastal cargo and passenger, naval, Government and other non commercial vessels.

N. B. - Each vessel generally constitutes two piloted assignments (inwards and outwards), not to mention voyages, compass adjustments and trial trips.

SOURCE: Exhibit 1460 (pp).



Appendix B (2)

MONTHLY TRAFFIC ARRIVALS PILOTED AT SAINT JOHN, N.B.
DURING 1959-1967

Year	Month	Ocean & Coastal Cargo	Misc.*	Total Other Vessels	Ocean & Coastal Tankers	Total all Vessels
1959	January.....	87	3	90	19	109
	February.....	75	2	77	12	89
	March.....	97	3	100	18	118
	April.....	22	3	25	10	35
	May.....	20	1	21	11	32
	June.....	17	2	19	13	32
	July.....	21	0	21	8	29
	August.....	14	3	17	9	26
	September.....	18	1	19	8	27
	October.....	22	0	22	10	32
	November.....	31	0	31	9	40
	December.....	74	2	76	19	95
		498	20	518	146	664
1960	January.....	93	2	95	20	115
	February.....	107	1	108	18	126
	March.....	97	1	98	14	112
	April.....	23	0	23	22	45
	May.....	17	1	18	24	42
	June.....	16	5	21	22	43
	July.....	13	1	14	11	35
	August.....	20	4	24	15	39
	September.....	23	0	23	21	44
	October.....	29	1	30	22	52
	November.....	29	2	31	21	52
	December.....	53	0	53	23	76
		521	19	540	241	781
1961	January.....	92	3	95	22	117
	February.....	83	1	84	26	110
	March.....	96	3	99	19	118
	April.....	21	0	21	19	40
	May.....	13	1	14	32	46
	June.....	14	2	16	13	29
	July.....	16	2	18	29	47
	August.....	21	0	21	27	48
	September.....	23	3	26	32	58
	October.....	16	1	17	24	41
	November.....	31	4	35	28	63
	December.....	58	2	60	15	75
		484	22	506	286	792

*Ocean and coastal passenger, naval, government and other non-commercial vessels.

Year	Month	Ocean & Coastal Cargo	Misc.*	Total Other Vessels	Ocean & Coastal Tankers	Total all Vessels
1962	January.....	77	2	79	38	117
	February.....	78	1	79	29	108
	March.....	87	3	90	28	118
	April.....	29	1	30	16	46
	May.....	16	5	21	19	40
	June.....	21	5	26	18	44
	July.....	18	2	20	18	38
	August.....	14	5	19	14	33
	September.....	18	2	20	15	35
	October.....	41	3	44	15	59
	November.....	22	1	23	13	36
	December.....	65	3	68	19	87
		486	33	519	242	761
1963	January.....	56	2	58	20	78
	February.....	81	0	81	15	96
	March.....	87	0	87	25	112
	April.....	20	0	20	16	36
	May.....	16	3	19	23	42
	June.....	12	4	16	16	32
	July.....	19	6	25	19	44
	August.....	19	1	20	21	41
	September.....	17	3	20	19	39
	October.....	23	0	23	17	40
	November.....	32	8	40	19	59
	December.....	70	5	75	19	94
		452	32	484	229	713
1964	January.....	84	1	85	24	109
	February.....	74	0	74	19	93
	March.....	79	0	79	20	99
	April.....	29	4	33	13	46
	May.....	17	4	21	18	39
	June.....	12	1	13	19	32
	July.....	21	7	28	15	43
	August.....	15	3	18	21	39
	September.....	17	3	20	19	39
	October.....	23	4	27	22	49
	November.....	14	8	22	19	41
	December.....	62	2	64	25	89
		447	37	484	234	718

*Ocean and coastal passenger, naval, government and other non-commercial vessels.

Study of Saint John, N.B., Pilotage District

Year	Month	Ocean & Coastal Cargo	Misc.*	Total Other Vessels	Ocean & Coastal Tankers	Total all Vessels
1965	January.....	71	1	72	25	97
	February.....	82	0	82	18	101
	March.....	100	0	100	20	120
	April.....	23	0	23	15	38
	May.....	20	1	21	15	36
	June.....	22	5	27	22	49
	July.....	23	2	25	15	40
	August.....	16	0	16	21	37
	September.....	28	2	30	17	47
	October.....	19	4	23	25	48
	November.....	23	1	24	20	44
	December.....	47	1	48	17	65
		474	17	491	230	721
1966	January.....	90	1	91	20	111
	February.....	81	1	82	17	99
	March.....	79	0	79	21	100
	April.....	26	0	26	15	41
	May.....	31	0	31	15	46
	June.....	46	6	52	16	68
	July.....	24	0	24	15	39
	August.....	15	3	18	19	37
	September.....	19	0	19	14	33
	October.....	26	0	26	15	41
	November.....	23	1	24	17	41
	December.....	58	2	60	14	74
		518	14	532	198	730
1967	January.....	70	2	72	19	91
	February.....	72	2	74	17	91
	March.....	62	2	64	18	82
	April.....	23	2	25	18	43
	May.....	26	2	28	16	44
	June.....	29	12	41	14	55
	July.....	22	4	26	9	35
	August.....	19	1	20	18	38
	September.....	21	4	25	10	35
	October.....	20	0	20	14	34
	November.....	29	2	31	15	46
	December.....	36	4	40	12	52
		429	37	466	180	646

*Ocean and coastal passenger, naval, government and other non-commercial vessels.

Year	Ocean & Coastal Cargo	Misc.*	Total Other Vessels	Ocean & Coastal Tankers	Total all Vessels
Annual Total 1959.....	498	20	518	146	664
1960.....	521	19	540	241	781
1961.....	484	22	506	286	792
1962.....	486	33	519	242	761
1963.....	452	32	484	229	713
1964.....	447	37	484	234	718
1965.....	474	17	491	230	721
1966.....	518	14	532	198	730
1967.....	429	37	466	180	646
	4,309	231	4,540	1,986	6,526
Annual Average.....	478.8	25.7	504.4	220.7	725.1
Annual Monthly Averages					
1959.....	41.5	1.7	43.2	12.2	55.3
1960.....	43.4	1.6	45.0	20.1	65.1
1961.....	40.3	1.8	42.2	23.8	66.0
1962.....	40.5	2.7	43.2	20.2	63.4
1963.....	37.7	2.7	40.3	19.1	59.4
1964.....	37.3	3.1	40.3	19.5	59.8
1965.....	39.5	1.4	40.9	19.2	60.1
1966.....	43.2	1.2	44.3	16.5	60.8
1967.....	35.8	3.1	38.8	15.0	53.8
	359.2	19.3	378.2	165.6	543.7
Monthly Average.....	39.9	2.1	42.0	18.4	60.4

*Ocean and coastal passenger, naval, government and other non-commercial vessels.

SOURCE OF INFORMATION: Exhibit 1460 (pp).

Appendix C (1)

SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS INVOLVING PILOTS OF THE PILOTAGE DISTRICT OF SAINT JOHN, N.B.

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
A. EVENTS HAPPENING WHILE NAVIGATING:										
I. Major Casualties (with or without loss of life).....	0	0	0	0	0	0	0	0	0	0
II. Minor Casualties (without loss of life):										
a. Minor strandings.....	0	0	0	1	2	0	0	0	0	0
b. Minor damage to ships.....	1	0	0	0	0	0	0	1	0	0
III. Accidents (without damage to ships).....	0	0	0	0	0	0	0	0	0	0
IV. Incidents (without any damage whatsoever):										
a. Touching bottom in channel.....	0	1	0	0	0	0	0	0	0	0
b. Others.....	0	0	0	0	0	0	0	0	0	0
	1	1	0	1	2	0	0	1	0	0
B. EVENTS HAPPENING WHILE BERTHING, UNBERTHING OR AT ANCHORAGE:										
I. Major Casualties (with or without loss of life).....	0	0	0	0	0	0	0	0	0	0
II. Minor Casualties (without loss of life):										
a. Minor strandings.....	0	0	0	0	0	0	0	0	0	0
b. Minor damage to ships: striking pier	2	3	2	1	0	1	1	0	0	0
III. Accidents (without damage to ships):										
a. Damage to pier.....	0	0	0	0	0	0	0	0	1	0
b. Damage to buoys.....	0	0	1	0	0	0	0	0	1	0

IV. Incidents (without any damage whatsoever):									
a.	Striking pier.....	0	0	0	0	0	0	0	0
b.	Striking vessel at pier.....	0	0	0	0	0	0	0	0
c.	Striking vessel at anchorage.....	0	0	0	0	0	0	0	0
d.	Striking buoys.....	0	0	0	0	0	0	0	0
e.	Others: touching bottom in channel.....	0	0	0	0	0	0	1	0
		2	3	3	1	0	1	1	0
Total Shipping Casualties, Accidents and Incidents Involving Pilots of the Pilotage District of Saint John, N.B.....									
		3	4	3	2	2	1	2	0

SOURCES OF INFORMATION: Exhibits 60, 426, 866, 1451 and 1467 (Folder 6).

Appendix C (2)

SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS INVOLVING PILOTS OF THE PILOTAGE DISTRICT OF SAINT JOHN, N.B., 1958-1967

A. EVENTS HAPPENING WHILE NAVIGATING:

I. MAJOR CASUALTIES (with or without loss of life) — Nil.

II. MINOR CASUALTIES:

a. Minor strandings

1. January 25, 1961, *Irvinglake* grounded on Navy Island with no mention of cause or damage; pilot reprimanded.
2. January 10, 1962, *Irvinglake* hit towboats and touched bank at Split Rock due to tide and wind.
3. July 30, 1962, *Irvinglake* hit rock and grounded above Pulp Mill due to tide.

b. Minor damage to ships

1. August 8, 1958, *Pilot Boat No. 6* and *Princess Helene* collided during fog; no pilot aboard *Princess Helene*.
2. February 11, 1965, *Transatlantic* struck *Pandora* due to tug error.

III. ACCIDENTS — Nil.

IV. INCIDENTS:

a. Touching bottom in channel

1. January 14, 1959, *Port Huon* grounded near foul ground but refloated immediately with no mention of cause.

b. Others — Nil.

B. EVENTS HAPPENING WHILE BERTHING, UNBERTHING OR ANCHORING:

I. MAJOR CASUALTIES (with or without loss of life) — Nil.

II. MINOR CASUALTIES:

a. Minor Strandings — Nil.

b. Minor damage to ships — striking pier:

1. April 1, 1958, *Rubens* struck pier 13 due to tugboat Master acting on his own although a pilot was on board.
2. October 29, 1958, *Sagoland* struck pier 13 due to current.
3. January 5, 1959, *Manchester Regiment* struck Pugsley pier due to wind.
4. September 29, 1959, *Spruce Branch* struck Crude Pier during construction due to fog.
5. December 22, 1959, *Rathlin Head* struck pier 2 as Master of tugboat did not understand order.
6. April 16, 1960, *Corinthic* touched fenders of pier 3 with no mention of cause.
7. November 13, 1960, *Irvingdale* struck Broad Street pier because of engine trouble.
8. November 3, 1961, *Karen Bolton* hit piling of pier due to wind.
9. January 27, 1963, *Manchester Spinner* struck pier 1 due to wind.
10. November 1, 1964, *Texaco Warrior* struck International Fertilizers pier due to high wind and parted tow line.

III. ACCIDENTS:

a. Damage to pier:

1. January 27, 1966, *Jalazad* struck grain gantry while berthing when vessel took a sheer; extensive damage to grain gantry.

b. Damage to buoys:

1. January 1, 1960, *Cape Araxos* pulled dolphin out of place at Fertilizers pier when tug started without signal from ship.

IV. INCIDENTS:

a. Striking pier — Nil.

b. Striking vessel at pier — Nil.

c. Striking vessel at anchorage — Nil.

d. Striking buoys — Nil.

e. Others:

1. February 22, 1965, *Nordia* grounded while manœuvering; no damage.

Section Three

PILOTAGE DISTRICT OF HALIFAX, N.S.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The legislation governing the District of Halifax is similar to that for Saint John. Statutory provisions of exception no longer exist and the District is completely governed by those provisions of the Canada Shipping Act generally applicable to pilotage. However, there are a number of Orders in Council, by-laws and regulations that specifically concern this District.

(1) CREATION OF THE DISTRICT

Like the Saint John District, there is no legislation now in effect which provides a legal basis for the existence of the District. (Reference is made to the study of this question in the Saint John District, vide pp. 28-29 which apply *mutatis mutandis*.) The governing provisions of the 1873 Pilotage Act are secs. 7 to 11.

The District had been created by the 1873 Pilotage Act and became effective as a federal Pilotage District on June 6, 1874, when the Governor in Council, by Order in Council P.C. 728 (Ex. 1531(a)), as required by secs. 7 and 8 of the 1873 Pilotage Act, fixed the limits of the new District and nominated the Government representatives on the statutory corporation created by the Act to be the District Pilotage Authority, i.e., the "Halifax Pilot Commissioners".

This Order in Council contained a provision similar to that for the Saint John District, which purported to create the District but was void since the matter was not within the competence of the Governor in Council. The relevant part of the Order in Council reads as follows:

"... His Excellency, by and with the advice of the Queen's Privy Council of Canada, has been pleased to Order, and it is hereby Ordered, that a Pilotage District be and is hereby formed for the County of Halifax, in the Province of Nova Scotia, the limits of which District shall embrace ...".

Solely for the purpose of pursuing the study of legislation it will be assumed (as was done in Section Two for Saint John) that the District did not cease to exist and that its Pilotage Authority exists in law.

(2) DISTRICT LIMITS

After studying the relevant legislation, the Commission concludes that the limits of the Pilotage District of Halifax have never been legally established. Since this legislation is extremely confused, the simplest way to unravel it is to examine it chronologically.

The District created by the 1873 Pilotage Act was, by exception, statutory. According to the scheme of organization provided by the Act, the Governor in Council normally creates Districts by regulations which also deal with all the accessories that accompany the formation of a District, i.e., establishing their limits, appointing the members of their Authority and, if necessary, imposing the compulsory payment of dues. However, by way of exception, Parliament dealt directly with the creation of the Halifax Pilotage District, provided it with a special form of Pilotage Authority and decreed that the payment of dues was to be compulsory. The Governor in Council was required to play a very limited but mandatory function, i.e., to appoint the three Government representatives on its corporate Pilotage Authority and to fix the limits of what Parliament had referred to as "the pilotage district of Halifax".

On June 6, 1874, the Governor General made the following order (P.C. 728, Ex. 1531 (a)):

"P.C. 728

GOVERNMENT HOUSE, OTTAWA

Saturday, 6th day of June, 1874

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL

On the recommendation of the Honorable The Minister of Marine and Fisheries and under the provisions of the 17th section of the Act passed in the Session of the Parliament of Canada, held in the 36th year of Her Majesty's Reign, Chaptered 54, and intituled: "An Act respecting Pilotage."

His Excellency, by and with the advice of the Queen's Privy Council of Canada, has been pleased to Order, and it is hereby Ordered, that a Pilotage District be and is hereby formed for the County of Halifax, in the Province of Nova Scotia, the limits of which District shall embrace all the Ports, Bays, Rivers and Coasts of the said County, and that in accordance with the 8th Section of the Act, and the provisions of the "Act to amend the Pilotage Act, 1873" passed during the last Session of Parliament, William Roche, Junior, Daniel Cronan and Lewis Anderson, Esquires, of Halifax, be, and they are hereby appointed Pilotage Commissioners under the Great Seal of Canada, as constituting the Pilotage authority for the District of Halifax, together with Joseph Seeton, Esquire, and Captain Peter Coffin, who have been duly elected by the City Council for the City of Halifax, and John Taylor Wood and John Pugh, Esquires, also of Halifax, who have been elected by the Executive Committee of the Chamber of Commerce of the City of Halifax, Pilotage Commissioners, in accordance with the provisions of the 8th Section of the Act first mentioned.

His Excellency has been further pleased to make the payment of pilotage dues compulsory within the limits of the District above defined.

W. A. HIMSWORTH,
Clerk, Privy Council."

There can be no doubt that this Order in Council applies to the statutory District of Halifax. It contains a specific reference to sec. 8 of the Act, and the details of the formation of the Pilotage Authority can not apply to any other Pilotage Authority than the Halifax Pilot Commissioners, the corporation created by secs. 8, 9 and 10 of the Act.

The only valid part of the Order in Council deals with the appointment of the members of the Pilotage Authority. The creation of the District and the imposition of the compulsory payment of dues are null because the Governor General had no power whatsoever over these matters as far as the Halifax District is concerned. While the Governor General had jurisdiction to fix the limits, his description of them is void because by so doing he enacted legislation contrary to the Act, i.e., he transformed the Pilotage District of Halifax from a port to a coastal District.

It is true that the Act does not define the term "Halifax" but, according to the rules of interpretation in such cases, the term should be used in its natural meaning in the context in which it is used. In the context both of the era and of pilotage legislation, Halifax meant the port of Halifax. If it had been intended to refer to the County of Halifax, it would have been necessary to say so specifically.

The system prevailing before Confederation in Nova Scotia was port pilotage, whose organization was accessory to that of the port (vide p. 169). Pilotage Districts as such were then unknown because pilotage at a given port was considered to be merely a service for that port and the organizational scheme provided by the governing Nova Scotia statute was on a port basis. Therefore, up to 1874 the pilotage service at Halifax was strictly port pilotage and the territorial jurisdiction of the Pilot Commissioners appointed pursuant to the governing provincial statute automatically corresponded to the limits of the port of Halifax as defined by the Nova Scotia statute.

The fact that Parliament referred only to the port of Halifax is also clearly apparent from the method of appointing the Pilot Commissioners, who, except for those appointed by the Governor in Council, are appointed by political bodies whose interest in pilotage is limited to the port of Halifax, i.e., the City Council and the Halifax Chamber of Commerce. Furthermore, sec. 8 states that persons so appointed will be the first Commissioners under this Act "at Halifax", thus clearly indicating that the *city* is referred to and not the *county*.

This meaning is further evident when reference is made to the other Districts also named in the Act, Saint John, N.B., Quebec and Montreal. In the Interpretation section of the Act, sec. 2, the terms "Pilotage District of Quebec" and "Pilotage District of Montreal" are defined by making reference to existing pilotage organizations that were defined in other Acts, namely, the Trinity House Quebec Act and the Montreal Harbour Commissioners Act. However, there is no such definition as regards Saint John and Halifax because none was necessary since in both cases the terms were to be taken in

their accepted meaning. If there could possibly be ambiguity about Halifax, there was absolutely none about Saint John and, since both terms were used together, they were to be given the same meaning.

By establishing a coastal Pilotage District the Governor in Council not only innovated but created a situation which was not contemplated in the Act and, hence, did not fit the scheme of organization the statute provided. As demonstrated in Part I (Part I, pp. 49 and ff.), the scheme of organization laid down in the 1873 Act was strictly on a port basis and the only two exceptions, i.e., river pilotage on the St. Lawrence River in the Districts of Quebec and Montreal, were dealt with in the Act through provisions of exception where necessary. When the Halifax Pilot Commissioners assumed their duties, they clearly understood the difficulties thus created and adopted a practical attitude by voluntarily limiting their jurisdiction to the pilotage service of the port of Halifax, which is clearly demonstrated by the title and content of their 1875 by-laws,—“By-laws, Rules and Regulations of the Board of Pilot Commissioners for the *Port of Halifax*” (Ex. 1531(d)).

However, since they also appreciated that their jurisdiction extended to all the ports in the *County of Halifax*, they treated them realistically as separate entities, merely appointing pilots to them by issuing licences restricted to a named outport. Extracts from the Pilotage Authority's records contained in the Robb Commission's report indicate that from 1881 to 1908 there had been up to eight pilots so licensed. However, as far as it was possible to ascertain without exhaustive research, the Halifax Pilot Commissioners did not make any regulations governing the licensing of pilots or their pilotage service in these outports. The practice was to treat the outport pilots (except for territorial competency) as if they were pilots of the port of Halifax. In other words, the by-laws for the port of Halifax were applied *mutatis mutandis* to the outports. This practice, however, was not sanctioned by any written regulation with resultant confusion when, due to lack of records, subsequent Pilot Commissioners no longer held the concept that their jurisdiction purported to extend beyond the port limits and guided themselves strictly by the letter of the port of Halifax pilotage regulations. This explains the confused situation which confronted pilot Smith in 1917 (vide p. 161).

In 1889, the Governor in Council issued an Order in Council which was, in effect, a consolidation of the Orders he had made creating Pilotage Districts, fixing their limits and related matters. (P.C. 1261, June 12, 1889, Ex. 1532.) The excerpt relating to the Halifax District reads:—

“His Excellency in virtue of the powers vested in him by “The Pilotage Act” Chapter 80, of the Revised Statutes of Canada, Section 13, and by and with the advice of the Queen's Privy Council for Canada is pleased to Order, that the following Pilotage Districts shall be and the same are hereby constituted and established, and the limits thereof fixed and determined as hereinafter mentioned.

...

HALIFAX, N.S.

Sec. 14. The Halifax Pilot Commissioners, as already constituted, consisting of three persons appointed by the Governor in Council, two persons elected by the City Council for the City of Halifax, and two persons elected by the executive committee of the Chamber of Commerce of the City of Halifax, shall be the pilotage authority of the pilotage district of Halifax, the limits of which shall be fixed by an Order in Council.

The limits of the pilotage district for the County of Halifax shall embrace all the ports, bays, rivers and coasts of the said County.

The limits of the pilotage district for the Port of Halifax shall extend in a north-east line from Chebucto Head Light to Devil's Island Light, thence to extend seawards in a radius of fifteen miles.

The coasting steamships "Edgar Stuart", "M. A. Starr" and "George Shattuck" all being under 250 tons register tonnage are relieved from *compulsory* pilotage dues under the provisions of Chapter 80 of the Revised Statutes of Canada, intituled "The Pilotage Act".

The Order in Council was obviously not issued at the request of the Halifax Pilotage Authority, since Halifax is only one of the many Districts described in it, but rather by officials in Ottawa who, for ready reference, required a consolidation in one document of all the Orders of the Governor in Council then in effect which created Pilotage Districts, fixed their limits, and imposed the compulsory payment of pilotage dues.

From 1873 to the consolidated Order in Council in 1889, many changes had been effected: some Districts had been abrogated while others had been divided or their limits altered. This Order in Council is probably the origin of the register of Pilotage Districts kept by the Department of Transport and from which Appendix II to Part 1 was compiled. If information about Districts created and abrogated before 1889 is needed, it can be obtained simply by consulting the yearly index of Orders in Council from 1874 to 1889 which are available at the National Archives in Ottawa.

It is also obvious that the officials who drafted sec. 14 were not conversant with the legal situation. This Order in Council made the question of the Halifax District limits more confused than ever:

- (a) According to the principles of the interpretation of statutes, which also apply to regulations, when different expressions are used in the same context it is to be understood that different meanings are intended. In the first paragraph reference is made to "the pilotage district of Halifax"; in the second paragraph to "the pilotage district for the County of Halifax"; in the third paragraph, to "the pilotage district for the port of Halifax". Therefore, the normal interpretation of sec. 14 would be that there existed three distinct Districts bearing the name of Halifax. Furthermore, there can be no possible doubt that para. 2 and para. 3 refer to two separate and existing Districts, because, in addition to

their name, their limits are not the same. The fact that the port of Halifax is situated in the County of Halifax does not solve the problem but merely creates a conflict of jurisdiction.

- (b) Para. 2 is nothing more than a consolidation of the pertinent parts of Order in Council P.C. 728 of 1874 and, therefore, there is no change in that respect.
- (c) Despite its wording, the limits described in para. 3 of sec. 14 do not correspond to the pilotage waters of the port of Halifax but merely describe the boarding area, i.e., a radius of 15 miles of open water southeast of the harbour entrance. This Order in Council, therefore, excludes the waters of the port of Halifax from the "pilotage district for the port of Halifax", which is a preposterous situation. It is obvious that the person responsible for drafting sec. 14 mistook what was described as "Pilot limits" in sec. 1 of the 1875 District by-laws (P.C. 675, Ex. 1531(d)) (vide p. 171) for the limits of the Pilotage District.

The court case of *Smith v the Halifax Pilot Commissioners* (1917, 35 DLR 765) is a pertinent example of the confusion that ensued. Pilot Smith had been licensed by the Halifax Pilot Commissioners in 1879 as an outport pilot for St. Margaret's Bay, which had been established as a separate port since 1875, (Order in Council P.C. 695 of July 9, 1875). He retired in 1914 after 35 years of service because of old age and infirmity. His licence had been renewed annually by the Halifax Pilot Commissioners. For the whole period he was subject to the by-laws governing the pilotage service for the port of Halifax. He was obliged to pay \$25 for his first licence, furnish a bond for which he paid a prescribed fee of \$1, and each year thereafter pay \$6, i.e., \$5 for the renewal of his licence and \$1 for the renewal of his bond (vide p. 172). In addition, he contributed annually 5% of his pilotage earnings to the Superannuation Fund. In 1914, when he was retired, his application for a pension was denied by the then Pilot Commissioners on the ground that St. Margaret's Bay was outside their jurisdiction and, furthermore, they refused to reimburse him his contributions, using the legal argument that they had been paid under a mistake of law and also because the claim, if any existed, would have been barred under the Statute of Limitations. The ex-pilot sued the Pilot Commissioners claiming a pension or, failing that, reimbursement of all his contributions. On the evidence brought before it, the Court came to the conclusion that St. Margaret's Bay was not within the legal limits of the Pilotage District and, therefore, that the plaintiff Smith was not entitled to receive a pension from the Superannuation Fund, but, on the other hand, condemned the Pilot Commissioners to make full reimbursement on the ground that it was not a mistake of law but a mistake of fact caused by the Pilot Commissioners themselves. In appeal the judgment was maintained.

Doubtless because the proper evidence was not brought forward, the Court was unable to unravel the puzzle of the District limits and the Halifax Pilot Commissioners' jurisdiction. The Court of Appeal judgment contains the following remark in this connection:

"All the individual commissioners who were in office in 1879 are now dead and there is therefore no explanation as to why a license was granted to the plaintiff in the first instance. The fair inference is that both the commissioners and the plaintiff acted in good faith and mistakenly supposed St. Margaret's Bay to be within the jurisdiction of the Board."

The parties and the Court mistakenly took the "pilots' limits" (the boarding area) contained in the Pilotage Authority's By-laws for the limits of the Pilotage District:

"The pilotage limits for the port of Halifax (as established by Order in Council) extend in a northeast line from Chebucto Head Light to Devil's Island Light; thence seawards in a radius of 15 miles. The Halifax Pilot Commissioners are the duly appointed pilotage authority for the port of Halifax and have the licensing of pilots as part of their duty."

The Robb Commission, which investigated the pilotage operations in Halifax the year after the Smith judgment, dismissed the question as follows:

"It came out in evidence that the Commissioners had been issuing licences to pilot vessels to and from the neighbouring outports. This has been found to be illegal and appears to have been stopped since 1908."

When the Minister became the Pilotage Authority those responsible for the District apparently were not aware of the real situation because in his first General By-law (P.C. 1042 of May 15, 1920, Ex. 1531(f)) the Minister treats the Pilotage District of Halifax as a port District, and furthermore purported in sec. 2 of this By-law to fix a new seaward limit of the Pilotage District of Halifax:

"2. The limits of the pilotage district of Halifax shall be inside a line drawn from Devil's Island to Chebucto Head between that and the automatic buoy off Portuguese Shoal."

It is quite obvious that, despite the use of the expression "the limits of the pilotage district of Halifax", this description was merely intended to describe the new boarding area which was described in the previous regulations as the "pilot limits for the port of Halifax". In 1920, the boarding area could be pinpointed and a 15-mile stretch of open water was no longer required because very few sailing vessels remained and a steam vessel was available to embark and disembark pilots. With such an interpretation the boarding area would have been between Chebucto Head and the automatic buoy off Portuguese Shoal on the line passing through Devils Island and Chebucto Head. If sec. 2 referred to the actual limits of the District, that part of the By-law was illegal since this subject-matter was not within the legislative competency of the Pilotage Authority.

Although this General By-law was soon repealed, the 1920 and 1930 General By-laws carried verbatim sec. 2 quoted above and it remained unaltered until they were repealed and replaced in 1961 by the existing By-law.

The General By-law now in force (P.C. 1961-70) defines neither the boarding area nor the limits of the Pilotage District. Subsec. 2(e) of its Interpretation section merely contains a vague reference to the limits of the District:

“2(e) “District” means the Pilotage District of Halifax, Nova Scotia, as defined by the Governor in Council pursuant to section 324 of the Act;”

The Pilotage Authority has been unable to produce any such definition by the Governor in Council made pursuant to sec. 324 of the present Canada Shipping Act and the only authority they can furnish is the Governor-General's Order, P.C. 728 of June 6, 1874, which described the District as a coastal District embracing the whole seaward limit of the County (Ex. 1531 (p)).

Since this part of the 1874 Order in Council has never been repealed or superseded (the 1889 Order in Council being merely a consolidation), apart from the question of the legality of the description as discussed above, this description is still today the only official definition of the District and the reference in it to the boundary of an electoral territorial division causes the same interpretation problems as the definition of the New Westminster District (vide Part II, pp. 243 and ff.).

- (a) Which county is intended, federal or provincial?
- (b) Is the reference to the County of Halifax a way of describing geographical lines by reference to the then boundaries of Halifax County?

With regard to question (b), it is obvious that the description in the Order in Council is merely a geographic reference, a way of describing a line and not a reference to the County as such. It would have been illegal to give the Pilotage District a limit that could be altered without passing an additional, specific Order in Council pursuant to the then applicable provision of either the Pilotage Act or the Canada Shipping Act (for further details, vide Part II, Section Two, pp. 243 and ff.).

As for question (a), the normal interpretation is that the Governor in Council would refer to a federal county and, if the reference is to be to a provincial county, it should be specifically indicated. However, this does not present any problem since in 1874, pursuant to sec. 40, subsec. 3 of the British North America Act, which was then the governing statute, each of the 18 provincial counties of Nova Scotia became a Federal Electoral District as well.

The following extracts from the various official texts establishing the boundaries of the County of Halifax as they were in 1874 give the location of the points of the boundaries on the Atlantic coast (Ex. 1531(b)):

(a) Re the west coastal boundary point—

“Commencing on the Windsor Road at the Northern Bounds of Montgomery Lot on Said Road from thence running South West to the Pock Wock Lake—thence bounded Westerly by the northern shore of said Lake until it comes to a Square Post and Pile of Stones placed at the Mouth of a Streamlet, which empties itself into the head of the North West Cove of said Lake—from thence running North Eighty Degrees West, twenty-four miles and three quarters to its intersection with the Public Road leading from Chester to Windsor, thence running South twenty-seven degrees East twelve miles and one quarter of a mile to the Sea Shore of St. Margarets Bay to a Square Post marked on the East Side County of Halifax, . . .”

(b) Re the east coastal boundary point—

“ . . . , Commencing at the South East angle of the County of Colchester, thence Southwardly by a right line to a point on Ecum Secum River, at or near the bridge crossing said river and thence by said river down stream to the ocean, . . .”

The seaward boundary of the County of Halifax in 1874 is the geographical description of the extent of the Pilotage District of Halifax as it has been ever since, i.e., the Halifax Pilotage District embraces about 115 miles of the Atlantic Nova Scotia coast extending from Halifax eastward to the Ecum Secum River (including the territory of the Pilotage District of Sheet Harbour), and westward from Halifax to Hubbards at the west head of St. Margaret's Bay.

The description of the District limits also poses a further problem of interpretation, namely, what is the seaward limit? From the description of the included waters the inland limit is clear, i.e., all the navigable waters of all ports, bays and rivers of the County of Halifax, plus all the waters bordering its coasts. The Order in Council, however, is silent re the extent of coastal waters seaward. (Reference is invited to the study made of this question regarding the seaward limits of the British Columbia Pilotage District, Part II, pp. 33-35.) To date, the baselines that may be established pursuant to the Territorial Seas and Fishing Zone Act, 1964, have been promulgated only for portions of the east coast of Canada, viz., the east coast of Labrador and the eastern and southern coasts of Newfoundland (Ex. 1523).

COMMENTS

As the Commission has already recommended (Part I, p. 55), since the limits of a District denote, *inter alia*, the extent of the territorial jurisdiction of the Pilotage Authority, the validity of pilots' licences and the extent of application of the compulsory system, it is of prime importance to describe them simply and completely and to use as reference points geographical features that can be easily identified.

The description of the Halifax District is a good illustration of this problem. Deep research was necessary to ascertain the definition of the "County of Halifax" in 1874, i.e., when the Order in Council was approved. Included was a review of the federal statutes from 1867 to 1874, which disclosed that in 1867 the boundaries of the then provincial County of Halifax had become the boundaries of the Federal Electoral District by the same name, and that these boundaries had not been amended between 1867 and 1874. However, to determine these provincial boundaries as of 1867 was a task in itself. It was learned that since the county was first described in 1826 in the Nova Scotia statutes there had been a number of amendments affecting different parts of the boundary lines, but that at no time up to 1867 had there been a consolidation, with the result that the whole series of provincial statutes from 1826 to 1867 had to be consulted. This research established that the west coastal boundary point had been the subject of a number of amendments, the most recent being 1863 (Ex. 1531(b)).

But even when these investigations were concluded the descriptions that came to light posed a problem of localization because the reference points referred to, e.g., the 1826 "square post marked on the East side County of Halifax" and the 1863 "bridge crossing the [Ecum Secum] river", do not appear on modern maps and charts, and it is doubtful that they still exist.

(3) PILOTAGE AUTHORITY

The Minister of Transport is the Pilotage Authority. The last appointment to this office was effected by a regulation emanating from the Governor in Council on August 15, 1956, Order in Council P.C. 1956-1264 (Ex. 1143).

(4) COMPULSORY PAYMENTS OF PILOTAGE DUES

There is no legal foundation at the present time for enforcing the compulsory payment system in the Halifax District. Reference is made to the study of this question in the Saint John District (pp. 30 and 31) where the legal situation is exactly the same. In 1874, P.C. 728 (Ex. 1531(a)) contained a provision to that effect which is word for word the same as contained in the corresponding Order in Council for the Saint John District (P.C. 789 of 1874, Ex. 1460(c)).

This clause in the Order in Council was null *ab initio*.

Subsec. 6(1) of the District General By-law stipulates that the payment of dues shall be compulsory in the Halifax District, but this By-law provision is *ultra vires* because the subject-matter does not come under the delegated regulation-making power of the Pilotage Authority which enacted the provision.

(5) ORDERS IN COUNCIL NOT PASSED UNDER THE CANADA SHIPPING ACT
AND AFFECTING THE ORGANIZATION OF THE PILOTAGE DISTRICT

The Department of Transport assumes the cost of operating the pilot station and pilot vessel service. The last authority for such expenditures of public money, apart from the annual estimates, is Order in Council P.C. 1959-19/1093 dated August 27, 1959 (Ex. 52).

(6) PILOTAGE AUTHORITY'S ENACTMENTS
CONFIRMED BY GOVERNOR IN COUNCIL

(a) *The Delegation of Powers under Subsection 327(2) C.S.A. and Appointment of a Secretary-Treasurer and Authorization for Payment of District Expenses*

On these matters, reference is made to the study of the situation that exists in the Saint John District which is exactly the same as in Halifax (vide p. 32).

(b) *Exemptions for Small Ships (subsec. 346(c) C.S.A.) and Withdrawal of Exemptions (sec. 347 C.S.A.)*

In its By-law, the Halifax Pilotage Authority has taken advantage of the legislative power it derives from these sections of the Act. The provisions now in force date in their present form from the 1963 amendments (P.C. 1963-1659 dated Nov. 7, 1963).

Subsec. 6(2) grants the small foreign ship exemption (subsec 346(c) C.S.A.) only to pleasure yachts not over 150 NRT. For comment on such incomplete legislation, vide Part I, p. 227.

Furthermore, under the authority of sec. 347 C.S.A., it has modified the relative statutory exemption granted to steamships registered in any of Her Majesty's dominions when engaged in voyages described in subsec. 346(e), first, by limiting it to smaller ships and, second, by providing a different treatment for steamships registered in Canada:—

- (i) The exemption is maintained only for such steamships of less than 1,000 NRT.
- (ii) It is completely withdrawn for non-Canadian steamships exceeding 1,000 NRT.
- (iii) It is partly withdrawn for such Canadian steamships that are 1,000 NRT or over in that only half the applicable rates are compulsorily payable when a pilot's services are offered and not accepted.

Re the use of the word "vessel" as defined in the By-law, failure to quote the correct authority in the Order in Council sanctioning such by-laws, and discrimination based on the country of registration, reference is made to Part I, pp. 221 to 229.

(c) *General By-law*

All the by-laws and regulations enacted by the Pilotage Authority that are still in effect are contained in a General By-law confirmed by Order in Council P.C. 1961-70 of January 19, 1961, as amended (Ex. 328). Since 1961, this General By-law has been amended three times: (1) by Order in Council P.C. 1962-128 of January 31, 1962, mainly reducing the annual leave from 30 days to 21 days and bringing some adjustment in the scale of voyage rates; (2) by Order in Council P.C. 1963-1659 of November 7, 1963, correcting the text of the provision concerning the withdrawal of relative statutory exemptions; (3) by Order in Council P.C. 1966-233 of February 3, 1966, enacting a new procedure regarding pilots' disciplinary measures.

The order of the content of the General By-law is that generally followed in all other Districts where the Minister is the Pilotage Authority, and except for a few variations is similar to the Saint John General By-law. Its main features are the following (the cross-reference to Part I of the Report at the end of each paragraph indicates where the validity of the matter is dealt with there):

- (i) The provision of pilotage services is made the responsibility of the Pilotage Authority which exercises full control through its local representative, the Supervisor of Pilots (Part I, C. 4, pp. 73 and ff.).
- (ii) The pilots' status is that of *de facto* employees who perform pilotage only when and as directed by the Supervisor. They are entitled to retain neither the pilotage dues earned by their services nor the statutory indemnities of secs. 359 and 360 C.S.A. These are pooled and the pilots are paid a salary in the form of a share of the net revenue of the pool based on availability for duty. They are granted leave of absence with pay, half pay and without pay (Part I, C.4 and C.8, p. 249).
- (iii) There is no apprenticeship. Pilots are recruited from qualified mariners with local experience. Each candidate must possess a certificate of competency as Master of a foreign-going or home trade steamship (unlimited as to tonnage) and must have served at least two years as Master of a vessel trading regularly into the District. In addition to possessing physical and moral fitness, the candidate must pass an examination on several nautical subjects including his local knowledge. His skill is assessed during one year of probation and, if satisfactory, he is fully licensed. (Re legality of probation, vide Part I, pp. 268-269.)
- (iv) The dues are based on net tonnage alone and the rates fixed according to a tonnage scale.
- (v) There is no Pension Fund. However, in order to meet the liability of the former pension scheme, the pilots are required to pay a

contribution in an amount to be fixed by the Authority based on the actuarial evaluation of liabilities conducted every three years, but such contribution shall not exceed 5 per cent of gross earnings. The present condition of this Fund and the legality of its provisions are studied in (Part III pp. 242-244).

2. HISTORY OF LEGISLATION

The history of pilotage legislation concerning the District of Halifax from the founding of the port to the first federal legislation can be divided into four periods:

- (a) 1749-1830, non-involvement by Government;
- (b) 1830-1873, partial Nova Scotia Government control;
- (c) 1873-1918, partial Federal Government control;
- (d) 1918-1968, fully controlled pilotage.

(1) 1749-1830

Pilotage came to Halifax in 1749 with the founding of the port by Lord Cornwallis. From 1749 to 1830, complete free enterprise prevailed, anyone could offer his services and it was the responsibility of owners or Masters to arrange for pilotage assistance and to settle the terms of employment and remuneration.

The Government of the colony originally maintained a number of pilots in its employ to serve Crown vessels and other vessels doing business with it. Their salary was ten shillings per day while employed (Queen's Printer publication *Currency, exchange and finance in Nova Scotia 1675-1758*). The Government owned and operated a pilot vessel which was required to cruise the harbour and speak to incoming ships to find out whether they needed assistance or information. The pilots manned the pilot vessel and when a pilot was embarked a crew member from that ship had to replace him in the pilot vessel and remain until the pilot was returned (Appointment and instructions to Masters of pilot boat *William Hadding* dated April 12, 1775). These pilotage operations, which were privately organized by the Government for its own benefit, were the responsibility of a Superintendent of Pilots who, *inter alia*, was in charge of the pilots employed by the Government. He had no authority over other persons who offered their services as pilots.

When the Government ceased to keep pilots in its employ, the navy experienced difficulty obtaining competent pilotage assistance. It recommended that those pilots formerly employed by the Government be engaged in other work to support them during the winter to ensure their availability (letter from Admiral Sir Richard Hughes dated October 13, 1790).

Pilotage for ships not provided with Government pilots was in the hand of private entrepreneurs, mainly local fishermen who had their own boats and

competed with each other. Usually the first pilot alongside was hired but when two or three arrived at the same time considerable bargaining ensued. Some were able pilots but collectively they were unorganized with only their own experience and local knowledge to guide them in the confused conditions that prevailed. In 1817, a bill was presented to appoint fit and proper persons as pilots, but it was shelved after second reading. A climax arrived during the 1820's when one of the Cunard Line tea clippers ran ashore at the entrance to the harbour. The owners and shipping interests of the port claimed that the casualty was due to lack of knowledge on the part of the pilot and demanded that pilotage be controlled and regulated.

Since these requests were not met, a Board appointed in 1829 by a general meeting of shipowners, underwriters and others interested in the trade of the port submitted a list of selected pilots which was passed to shipping interests so that preference could be given to the 37 individuals named.

(2) 1830-1873

On March 8, 1830, the Nova Scotia Legislature passed its first Pilotage Act, entitled "An Act to regulate the pilotage of vessels at the Port of Halifax" (11 Geo. IV c. 7). During the period 1830-1850, similar laws were passed providing *ad hoc* legislation for other ports.

The 1830 Pilotage Act for the port of Halifax established the partial system of control and the same organizational structure that was adopted later by the Federal Government in the 1873 Pilotage Act, i.e., licensing authorities on the basis of ports. The Governor General in Council was empowered to appoint a commission whose main function was to see that the port of Halifax was serviced by a sufficient number of qualified, reliable pilots acting as free entrepreneurs. Pilotage rates were fixed in the Act itself in the form of a scale based on tonnage for merchantmen and on ship's rates for naval vessels. The payment of part dues was made compulsory to the first pilot who offered his services to an inbound ship southward of Herring Cove and Trump Cape, the share being one third dues if the vessel were owned in the province and one half for other vessels. This share was later increased to two thirds in winter. Vessels owned in the province and employed in coastal trade or fishing, all vessels under 80 tons, all ships of war belonging to the Crown and all vessels not spoken to were fully exempt. The pilots provided their own pilot boat which was to be properly marked. The penalties imposed by the Act were to be recovered before any two Justices of the Peace for the County of Halifax; one third of such penalties belonged to the informer and the remainder formed a fund to defray the salary of the Secretary and other contingent expenses of the Pilotage Commission. Any surplus became what was later called the Pilot Fund and was to be used by the Commissioners for the benefit of infirm and disabled pilots.

The Act contemplated inward pilotage only, but an amendment in 1831 (1 William IV c. 12) extended it to outward pilotage, the outward rates being one third less than the rates for inward trips. The Act received minor amendments in 1832, 1845 and 1847.

When the Nova Scotia Statutes were revised in 1851 the various *ad hoc* pilotage statutes were consolidated into a general Act that applied only to named ports, i.e., Halifax, Sydney, Pictou, Pugwash, Wallace, Antigonish, St. Mary's Arichat, Tatamagouche and Point Bruley. (R.S.N.S. 1851, c. 78 "Of Pilotage Harbors, and Harbor Masters"). It provided an identical system with very few changes in detail from the Act of 1830.

The Act of 1851 was re-enacted with minor amendments in the 1864 Revised Statutes of Nova Scotia (R.S.N.S. 1864, c. 79 "Of Pilotage Harbors, and Harbor Masters") and continued in force after Confederation until it was superseded by the federal Act of 1873.

(3) HALIFAX PILOT COMMISSIONERS (1873-1918)

In the 1873 Pilotage Act, pilotage in the port of Halifax was dealt with as a case of exception together with Saint John, Quebec and Montreal. The provisions of general application of the Act applied to the pilotage organization of Halifax except when otherwise provided. These specific provisions were gradually withdrawn and the remnants were abrogated by the 1934 C.S.A.

These special provisions for the District of Halifax were similar to those provided for the District of Saint John. Therefore, to avoid repetition reference is made to Section Two, pp. 38-40 which apply *mutatis mutandis*. The specific provisions regarding the creation and organization of the District are secs. 7 to 11, the name of the statutory corporation is the Halifax Pilot Commissioners composed of representatives appointed by the City Council, the Executive Committee of the Chamber of Commerce of the city of Halifax and the Governor General. As in the case of Saint John, the Governor General had failed to appoint the federal representatives prior to the time limit fixed in the Act but did so after the 1874 amendment by Order in Council P.C. 728 dated June 6, 1874 (Ex. 1531(a)). However, the Halifax Pilotage Authority did not have power to modify statutory exemptions (Section Two, p. 40).

P. C. 728 made by the Governor General to form the District is similar to the Order he made concerning the Saint John District *mutatis mutandis*, the only differences being those of local character such as the names of the appointees and the description of the District limits:

- (a) It purported to create the District. As indicated on p. 156, this clause was beyond his legislative powers.

- (b) It fixed the District limits in such a way that the District became a coastal District; the description contained therein is still in effect (for legality vide pp. 157-165).
- (c) It completed and approved the membership of the corporate Pilotage Authority by confirming the appointment of the four members designated by the City and the Chamber of Commerce and by naming the three Government appointees. This part of the Order in Council was modified from time to time as it became necessary to fill vacancies until the corporation became *functus officio* when it was replaced in 1918 by the Minister of Marine and Fisheries as Pilotage Authority.
- (d) However, no mention was made of the appointment of the Secretary and Treasurer of the corporation. In this respect the Order in Council differs from the P.C. relating to Saint John.
- (e) It also purported to make the payment of dues compulsory, a matter which was already covered in the Act and over which the Governor in Council has no jurisdiction (vide p. 165).

Like the District of Saint John, the Halifax District's regulations may be divided into two periods:

- (a) the regulations of the Halifax Pilot Commissioners 1875-1920, the period of free enterprise;
- (b) the regulations of the Minister as Pilotage Authority 1920-present, the period of fully controlled pilotage.

The Halifax Pilot Commissioners' first By-laws were sanctioned by the Governor in Council on September 28, 1875 (Order in Council P.C. 964 of 1875 (Ex. 1531(d))), and although amended from time to time remained in force without consolidation until repealed when the Minister as Pilotage Authority made his first By-laws in 1920.

The By-laws of 1875 did not apply to the whole Pilotage District but were limited to the pilotage organization in the port of Halifax (vide p. 159) and were entitled "By-laws, Rules and Regulations of the Board of Pilot Commissioners for the Port of Halifax".

Their main features were as follows:

- (a) A boarding zone called "Pilot limit" was created in the approaches to the port. It extended seaward to a radius of 15 miles from a line drawn across the entrance to the harbour between Chebucto Head light and Devils Island light. A boarding area of this extent was necessary in the days of sailing ships.
- (b) Although no direct mention is made of it, all pilots who held a licence under the repealed legislation were clearly issued a new licence automatically. However, to recruit new pilots an apprenticeship system was established. It consisted of five years' service on

board a licensed pilot vessel, after which the candidate had to serve at least six months as seaman on board a square-rigged vessel and pass an examination before the Pilotage Authority. The newly licensed pilot had to pay a \$25 licence fee and a further annual sum of \$5 for the renewal of his licence. In addition, he had to supply an \$80 bond as well as two sureties of \$40 each as a guarantee for his compliance with his duties. He had to pay a fee of \$1 for the first bond and for each renewal. All these fees formed part of the Pilotage Fund, whose nature and use were not then defined in the regulations.

- (c) The number of pilots was not to exceed 25.
- (d) There were regulations regarding the licensing of pilot boats whose number was limited to four. It would appear that, as in Saint John, the company system was adopted since it was stated that the owners of each licensed pilot boat had to select a Master from among themselves. However, the regulations did not state how the companies were to be financed. All pilot boats had to be surveyed and were to carry one or more suitable small boats for the conveyance of pilots to and from vessels and for rendering assistance to vessels in distress, and also to have one or more life preservers for each pilot and apprentice attached to such pilot boat. The name of the selected Master of the pilot boat had to be approved by the Pilotage Authority which then made him the custodian of the register and of the licence of the said boat. The boats had to be properly marked. The licence was valid for one year and the licence fee was \$20.
- (e) The pilot who brought a ship inward was entitled to the pilotage fees outward. The rates, as before, were in the form of a scale based on tonnage, the outward charges being lower by about one-third. The dues were collected by the pilots but had to be turned over to the Pilotage Authority's Treasurer.

The several amendments to the 1874 By-laws generally concerned rates and exemptions. In 1876, a unique procedure was adopted by amending the By-law to provide individual exemptions for three named vessels (P.C. 729, July 28, 1876, reproduced as para. 4 of sec. 14 of P.C. 1261 dated June 12, 1889, vide p. 160).

In 1877 (40 Vic. c. 20), the Pilotage Act was amended, *inter alia*, to allow the Pilotage Authority concerned to withdraw the statutory exemption for steamships engaged in coastal voyages in so far as the ports (not the Pilotage Districts) of Halifax, Miramichi and Pictou, and the Pilotage District of Sydney were concerned.

In 1882, the Pilotage Act had been amended (45 Vic. c. 32 sec. 1), *inter alia*, to empower Pilotage Authorities to examine witnesses under oath. However, the Act did not empower them to compel the attendance of witnesses. In 1885, the Halifax Pilot Commissioners found a partial solution to the problem by making it a regulation offence for a pilot not to attend when ordered or to refuse to be sworn (P.C. 1370 dated 10 July, 1885, Ex. 1531(d)(5)). However, they had no means of compelling other persons. The power to examine under oath was withdrawn by the 1934 C.S.A. (vide Part I, pp. 336 and 337).

The most important amendment was P.C. 579 dated February 27, 1893, which added twelve by-laws to the twenty seven already enacted:

- (a) It contained provisions for settling disputes over pilotage dues collected from non-exempt ships which did not employ a pilot.
- (b) It created the office of Secretary and Treasurer.
- (c) It enacted the first rules for the operation of the pilotage fund and regulated expenditures from it as follows:
 - (i) three per cent instead of $2\frac{1}{2}\%$ of the pilotage dues to be paid to the Superannuation Fund;
 - (ii) all expenses incurred in conducting the pilotage service;
 - (iii) the Secretary-Treasurer's salary fixed at \$600 per year;
 - (iv) the Pilotage Authority's expenses to a maximum of \$100 per Commissioner and \$200 for the Chairman;
 - (v) the balance to be distributed among the pilots "according to the amount of their respective earnings" by monthly instalments.
- (d) It also provided for the retirement of pilots on account of age or infirmity.
- (e) The benefits from the Superannuation Fund for a pilot whose licence has been cancelled for any reason were an annual payment for life of not less than \$50 and not more than \$300 at the discretion of the Pilotage Authority. Benefits were also provided for pilots' widows and children.

Up to that time most Pilotage Authorities had dealt freely with pilotage funds without seeking the mandatory approval of the Governor in Council for expenditures (vide Part I, pp. 110 and ff.). In the Halifax District, the Pilotage Authority had hired a Secretary and Treasurer and was paying him a salary. The Halifax Pilot Commissioners were even paying themselves out of pilotage dues compensation for their services amounting to \$950 each year from 1884 to 1887 and \$1,000 thereafter. This led to abuses and in 1889 the Governor in Council issued a general order (P.C. 1194 dated May 27, 1889, Ex. 1533) prohibiting any payment to members of Pilotage Authorities or to their Secretaries and Treasurers out of their respective pilotage funds unless such expenditures were specifically authorized in the District By-law.

In 1918, the pilotage system and its administration at Halifax were investigated by a Royal Commission under the chairmanship of Mr. Thomas Robb of the Shipping Federation of Canada (Exs. 1326 and 1328). The Commission's mandate also included the Pilotage Districts of Miramichi, Sydney, Louisbourg, Saint John, N.B., Montreal and Quebec. It is obvious, however, from its ensuing report that the situation in Halifax prompted the investigation. The Pilotage Authority and the service had deteriorated in efficiency but the immediate cause of the Commission's appointment was a series of serious shipping casualties that occurred in the port. The Royal Commission in the preamble of its interim report on Halifax states:

"... there was a very special reason for investigation in respect of the Halifax Pilotage District, arising from the terrible calamity which had so recently befallen the city of Halifax; and the need there of certain reformation, reorganization and improvement was obviously apparent in view of a succession of serious accidents to vessels in the port of Halifax, a number of such vessels being in charge of pilots culminating in the *Mont Blanc-Imo* collision and the loss of the hospital ship *Letitia*."

The first public hearing was held in Halifax on February 8, 1918, and 19 days later, on February 27, the Commission's report was rendered. The final report, which covered the other Districts and summed up the general recommendations, was rendered a little more than seven months later on September 10. The report did not explore the legal situation but was limited to outlining the most pressing problems and suggesting practical solutions.

The Robb Commission found that the existing situation was chaotic on several counts: the Corporation's records were inadequately and badly kept; the Secretary Treasurer's duties were clerical rather than administrative; the pilots' earnings were improperly and misleadingly entered; gratuities were paid by pilots to Masters for signing false pilotage bills; there had been serious laxity re possession and use of alcohol by pilots; a serious shortage of pilots existed; the training of apprentices was conducted haphazardly; unauthorized second-class licences were issued after three years of apprenticeship; the pooling system was illogical because all pilots were granted an equal share whether or not they had been available for duty; competition among pilots had completely disappeared; the pilot vessel service was antiquated, inefficient and costly to operate.

The pilot vessel service was operated by two schooners stationed outside the harbour each week in turn. One had a small auxiliary engine. These schooners were owned jointly by the active and retired pilots and the estates of deceased pilots. The total earnings of the pilots for the month were divided in equal shares, after crediting one and a half shares to the owners of the pilot boats. General complaints were recorded that the schooners provided antiquated service to incoming vessels and recommendations were submitted for a suitable steam pilot tender which would be available under all weather conditions.

The Commission charged both the Pilotage Commissioners and the pilots themselves with laxity regarding the apprentices whose only training was service on board pilot schooners. They were never allowed to accompany pilots on board vessels being piloted and no record of their attendance was kept. The Commission related the *Letitia* disaster to the incompetency of the pilot who was trained under such a system:

"In the case of the pilot of the *Letitia*, it was ascertained from the minutes that he was received as apprentice on January 17, 1912, and apparently obtained his second-class licence towards the end of January, 1915, although there is no minute of his passing any examination then, and we presume he received his branch licence in January, 1917, as he appears in the minutes of February 1, 1917, among the list of branch pilots, although again there is no record of his having passed an examination. This man had only six months' experience as a branch pilot when the casualty to the *Letitia* occurred."

The Commission's main recommendations are as follows:

- (i) The Halifax Pilotage Commission to be superseded by the Minister of Marine and Fisheries as Pilotage Authority. This recommendation does not appear to have been prompted by the unsatisfactory performance of the Halifax Pilotage Commissioners but rather was based on the opinion held by the members of the Royal Commission that the Minister of Marine and Fisheries should become the Pilotage Authority for all Pilotage Districts in Canada, notwithstanding their favourable reports on the local Commissions at Miramichi and Louisbourg. The Commission did not elaborate its reasons for such an important recommendation which altered the basic system of public control. It is clear from their recommendations as a whole that the members of the Commission reached this conclusion because of their own personal knowledge and belief, especially their experience in the Quebec and Montreal Districts which had been under the Minister's direction since 1903 and 1905 respectively.
- (ii) A Superintendent with sea-going experience but not recruited from the pilots or ex-pilots to "be immediately placed in full charge of the District, to reorganize and administer its affairs, and be directly responsible to the Minister", and his duties to be defined in the District By-law.
- (iii) The apprenticeship system to be redefined in order to ensure a basic qualification not lower than "second mate of a sea-going ship", extensive local knowledge and skill in ship handling, *inter alia*, by requiring the apprentices to accompany the branch pilots on at least 100 round trips, physical fitness and a thorough written examination. However, in their final recommendation they favoured discontinuance of the apprenticeship system in force in the Pilotage Districts of the Maritime Provinces and in its place recruitment of pilots from qualified mariners.

- (iv) Pilots to be despatched on a tour de rôle system, the roster for outward trips being kept at the pilotage office and for inward trips on board the pilot tender.
- (v) Pilotage earnings to be paid to the Department and the pilots to be on salary paid out of net District earnings up to a maximum set by negotiation with the Department or to the amount of net revenue available if insufficient to meet the maximum, in which event the net revenue to be shared among the pilots on the basis of availability for duty. "... All pilotage services in Canada should be made and supported by the shipping, and should not be a drain on the revenue of the country".
- (vi) The pilots to be transported in the harbour proper by a small launch or tender provided by the Pilotage Authority and pilot boat service in the boarding area to be supplied by a steam pilot vessel with accommodation for 15 pilots exclusive of crew, provided by the Government or the Pilotage Authority with operational costs defrayed by the Pilotage Authority.
- (vii) Pilotage certificates to be issued to Masters and mates of Canadian registered ships trading regularly to Halifax.

(4) 1918-1968

The Government acted promptly upon the principal recommendation of the Robb Report dated February 27, 1918. Order in Council P.C. 607 of March 14, 1918, made pursuant to the War Measures Act, appointed the Minister of Marine and Fisheries the Pilotage Authority of the Halifax District (Ex. 1531(e)) and gave him extraordinary powers to enable him to carry out a complete reorganization. Since 1904 (4 Ed. VII c.29), the Governor in Council had power to appoint the Minister of Marine and Fisheries Pilotage Authority in any District but the powers derived from the War Measures Act were used instead, possibly because the Canada Shipping Act contained a proviso that the recommendation of the shipping interests of the port or of the Council of the Board of Trade had to be obtained first, and also because an amendment to the Canada Shipping Act would have been required to effect certain changes. Hence, in addition to providing for the appointment of the Minister as Pilotage Authority, the Governor in Council made specific legislation in the form of regulations as follows:

- (a) The assets of the Halifax Pilot Commissioners were "transferred to and vested in the Crown to be administered by the Minister of Marine and Fisheries".
- (b) In addition to the normal powers enjoyed by Pilotage Authorities under the Canada Shipping Act, the Minister was given full and

discretionary power to reorganize the pilotage system in the District, *inter alia*, "to retire or dismiss any pilot or pilots". This he could not have done under the Canada Shipping Act.

- (c) The Minister was given blanket authority to use the pilotage fund to defray "all expenses in connection with the reorganization and administration of the said pilotage district".

This Order in Council was to have force and effect during the war and for one year thereafter. In 1919, sec. 432 of the 1906 Canada Shipping Act was amended to omit the requirement for the recommendation of local interests for the appointment of the Minister as Pilotage Authority in any District (9-10 Geo. V c. 41 s.1, assented to July 7, 1919). On December 17, 1919, by Order in Council 2556 (Ex. 1451(e)(1)) the appointment of the Minister was continued as from Jan. 1, 1920, under sec. 432 C.S.A. as amended. From that moment, however, the Minister was deprived of the special powers he had been granted.

It was not until May 15, 1920, that any change was made in the District regulations. On that date, a completely new set of by-laws superseding all existing ones was sanctioned by P.C. 1042 (Ex. 1531(f)). This General By-law made basic alterations in the organization of the District in accordance with the recommendations of the Robb Commission, i.e., assumption by the Pilotage Authority of full control over the provision of pilotage services and modification of the pilots' status to *de facto* employees. Its main features were:

- (a) The boarding area was greatly reduced, i.e., "inside a line drawn from Devils Island to Chebucto Head between that and the automatic buoy off Portuguese Shoal", thus abolishing the fifteen-mile stretch of open water which was no longer required because steamships had replaced sailing ships and a steam propelled pilot vessel was also in service.
- (b) The pilotage dues were purportedly made the property of the Crown. They were made payable to the Collector of Customs, who withheld clearance until all dues had been received, and were to be deposited in a chartered bank and remitted twice monthly to the Department of Marine. The pilots were placed on a salary calculated in accordance with the recommendation of the Robb Commission, the ceiling being \$300 per month.
- (c) The Pilots' Committee was instituted.
- (d) The By-law contained no regulations on despatching.
- (e) The apprenticeship system was abolished except for the acquired rights of those already engaged as apprentices. Instead the pilots

were to be recruited from Masters holding a certificate of competency not lower than Master of a passenger steamer in the Canadian coasting trade, who had actually performed such service. Candidates had to pass a written examination. When vacancies occurred, successful candidates who were physically and morally fit were first issued a six-month probationary licence followed by a permanent one if found satisfactory.

- (f) In case of emergency the Authority was given power to issue a temporary licence to any person deemed competent and to pay him on a *per diem* basis out of the Pilotage Fund in an amount to be determined by the Minister.
- (g) The pilots were granted 21 days' annual leave. In case of illness they were entitled to sick leave with full pay for two months and half pay for one month within twelve consecutive months.
- (h) The Minister became responsible for the administration of the Superannuation Fund. *Inter alia*, the pension benefits to retired pilots were no longer left to the discretion of the Pilotage Authority but were fixed at \$20 for each year of service, the total not to exceed \$600 per annum.

There was little change in the pilots' status from previous years. They had long since ceased to enjoy the independence of free enterprise, competition for employment had disappeared, assignments were allocated in turn, earnings were pooled and pilot vessel service expenses were paid out of the pool. The only significant change was that responsibility for despatching, pooling and operating the pilot vessel service was assumed by the Authority, thus greatly improving their working conditions. The only drawback was the ceiling on their remuneration (it was removed in 1940). However, this General By-law was short-lived. It was superseded the same year by P.C. 2744 of Nov. 12, 1920 (Ex. 1531(g)) which made the following principal changes:

- (a) Statutory exemptions were altered by charging certain categories of exempt vessels half rates and making small regular traders fully exempt for the balance of any calendar year after they had paid 12 full rates.
- (b) Apprenticeship was re-established. Indentured apprentices were to serve on board pilot boats for a term of five years, at the end of which they were to acquire experience as articulated seamen on board ocean-going vessels. At the same time, the system of recruiting from qualified mariners was retained and the range was extended to include Masters of British ocean-going vessels with actual service as such.
- (c) The maximum benefits from the Superannuation Fund were increased to \$800.

This General By-law was amended twice, first, to withdraw the exemption for sailing ships over 250 NRT engaged exclusively in fishing (P.C. 1752 of 30 May, 1921, Ex. 1531(g)(1)) and, second, to change from calendar year to fiscal year the operation of the Pilotage Fund and the computation of the pilots' salary ceiling and, *inter alia*, to increase the Superannuation Fund benefits to \$30 per year up to a maximum of \$1,200 (P.C. 277, Feb. 26, 1925, Ex. 1531(g)(2)).

On April 28, 1930, a new General By-law was approved by the Governor in Council (P.C. 825, Ex. 1531(h)) which was amended 22 times and remained in force until superseded in 1961 by the current General By-law. Apart from tariff rates and exemptions, its main basic changes were:

- (a) The pilots' maximum salary was to be computed on a fiscal year basis and was not to exceed \$4,000.
- (b) The balance remaining in the Pilotage Fund after the pilots' salaries had been paid was to be used at the discretion of the Pilotage Authority, "for the improvement or betterment of the pilotage service at Halifax, or remitted to the Receiver General of Canada".
- (c) A specific section was added which provided that pilot vessels were to be purchased out of the revenue of the District and owned by, and registered in the name of, the Pilotage Authority.
- (d) Both apprenticeship and recruitment from experienced mariners were retained as sources of pilot candidates.
- (e) The right to appoint temporary pilots was withdrawn.
- (f) Superannuation benefits were increased to \$40 per year of service to a maximum of \$1,600 per year.
- (g) The Pilotage Authority assumed disciplinary powers and the Superintendent was purportedly given power to impose a fine not exceeding \$40 except in cases of continuing breach when a further penalty not exceeding \$4 per day could be imposed, or by suspension for any period, or by withdrawal of the licence. Similarly, the Pilotage Authority could award fines for unlimited amounts, suspend and dismiss pilots for breach of By-law (re legality vide Part I pp. 373 and ff.).
- (h) The By-law remained silent on the subject of despatching.

The more important amendments to the 1930 By-law (Ex. 1531(h)(1) to (21)), excluding those concerning tariff rates and exemptions, were the following:

- (a) The ceiling on pilots' earnings was removed (P.C. 762 of Feb. 23, 1940 (Ex. 1531(h)(5))), thereby re-establishing true pooling based on the pilots' availability for duty, a system which still exists.
- (b) P.C. 4429 dated May 26, 1942 (Ex. 1531(h)(8)) enacted under the War Measures Act granted authority to issue temporary pilot

licences, valid for one year and renewable as required, to meet the increased demand for pilotage services during the Second World War when few certificated Masters and mates possessing the required qualifications were available. The maximum age limit for appointment as temporary pilots was set at 50. Candidates were required to hold a foreign-going or home-trade Master's certificate of competency accompanied by credentials showing at least two years of service as first mate of a foreign-going ship, and that they had actually traded into the port of Halifax for at least two years, and to pass an examination.

- (c) The salaries and expenses of the clerical staff at the pilotage office were excluded from the general expenses of the District by P.C. 2175 of April 12, 1945 (Ex. 1531(h)(9)). The Superintendent's salary was also excluded by P.C. 1449 of April 8, 1948 (Ex. 1531(h)(13)).
- (d) P.C. 3918 of Sept. 19, 1946 (Ex. 1531(h)(11)) created a pilot boat charge, but this was deleted in 1947 when P.C. 2175, June 3, 1947 (Ex. 1531(h)(12)) provided a new set of rates incorporating a 30% increase.
- (e) In 1948, the present system of administering pilotage money was adopted. Dues were made payable to the Pilotage Authority and no longer to the Collector of Customs, and were to be deposited in a chartered bank in the name of the Pilotage Authority and not in the name of the Receiver General of Canada (P.C. 1449 of April 8, 1948 (Ex. 1531(h)(13))). However, the Superannuation Fund continued to be administered by the Department of Transport and the compulsory deductions were to be sent to its Chief Treasury Officer. Therefore, from that moment the Pilotage Fund was to be administered locally by the representative of the Pilotage Authority.
- (f) In 1950, apprenticeship was cancelled and the sole source of recruiting was from mariners with the same qualifications and credentials as before. The provisions purporting to give the Pilotage Authority and the Superintendent disciplinary powers were modified and extended P.C. 5195 of November 1, 1950 (Ex. 1531(h)(14)).
- (g) P.C. 1593 of April 4, 1951 (Ex. 1531(h)(15)) was enacted to cover a specific case; it concerned the net proceeds of the sale of the pilot vessel *Camperdown* in the amount of \$22,000, which sum, being considered pilots' earnings, was thereby distributed among the 23 pilots that were active on the date of sale, i.e., September 25, 1950. This By-law was in contradiction to the Exchequer Court decision of 1946 in the case of *Himmelman et al v the King* (1946 Exchequer Court Report 1), which was to the effect that assets

purchased out of the Pilotage Fund did not belong to the pilots, that they had only the use of them and that title belonged to the Crown. (For details vide Part I, pp. 114 and 115.) By sharing the proceeds of the sale among the active pilots the Pilotage Authority followed the same procedure it had adopted previously when a former pilot vessel, the *Sambro*, was sold. No doubt because of the court action brought by the temporary pilots in 1946, sharing was formally approved by a specific by-law.

- (h) In 1951, following the Audette Report, the Government undertook to reimburse the Pilotage Authority for the operation of pilot vessels and the pilot station (P.C. 120/422 of January 25, 1951 (Ex. 52)) provided the pilots acted in turn as Masters of the pilot vessels without extra remuneration, and the Pilots' Committee, in conjunction with the Superintendent, became responsible for the employment of the necessary crews. P.C. 2423 of May 16, 1951 (Ex. 1531(h)(16)).
- (i) In 1952 and 1954, two special superannuation cases were settled, each through a special by-law which approved a lump sum payment to a pilot whose licence had been withdrawn and cancelled for cause by the Pilotage Authority P.C. 4610 of December 10, 1952 (Ex. 1531(h)(17)); and to a pilot who had resigned P.C. 1954-1030 of July 6, 1954 (Ex. 1531(h)(19)). The pension fund at that time was deeply in deficit and a few years later, in 1958, P.C. 1958-1475 of October 23, 1958 (Ex. 1531(h)(20)) the pension fund was discontinued except for the purpose of discharging the liabilities then incurred, for which the pilots are still paying.
- (j) In 1959, after the Department of Transport became responsible for pilot vessel service, the tariff was amended to include a \$10 pilot boat charge and the Pilotage Fund provisions as they now stand were adopted, *inter alia*, by withdrawing the power of the Pilotage Authority to pay out of it any District expenses, since they were being paid by the Department of Transport (P.C. 1601 of Dec. 18, 1959, Ex. 1531(h)(21)).

In 1961, the General By-law now in force abrogated the 1930 General By-law and all its amendments. For its main provisions, vide pp. 167 and 168.

Between 1920 and 1959, the Government financed the operation of the pilot vessel service by providing from time to time, as required, interest-free loans to cover capital expenditures, thereby prorating repayment over a period of years at no extra cost to the pilots. For instance, on June 15, 1941, by Order in Council P.C. 5167, the Government advanced the District a \$65,000 loan from the Department of Transport, to be reimbursed without interest in yearly payments in the amount of 7 per cent of the District gross revenue.

The organization and operation of the service in the District of Halifax were studied by Captain F. S. Slocombe during his 1947 survey and by the Audette Committee in 1949. For general information about these studies vide Part II, p. 20 and ff.

(5) SLOCOMBE REPORT 1947 (Ex. 1452)

In his report dated March 4, 1947, Captain F. S. Slocombe found that the main problem in Halifax was financial caused by the high cost of operating the pilot vessel service.

In 1947, 22 active pilots were on strength. They were divided into two groups of 11 alternating every week, one group performing assignments in the harbour and piloting outbound ships, while the other served inbound ships embarking from the pilot vessel at the seaward loading station. The main pilot vessel, M.V. *Camperdown*, was on station most of the time, but came to Halifax every Monday for a short period for stores and fuel when she was relieved by the auxiliary schooner *Nauphilia*. Two pilots acted as Masters of the pilot vessel while cruising on station, each taking six-hour watches. Pilots boarding inbound ships or disembarking from those outbound were obliged to use the pilot vessel's rowboat with all its attendant hazards. At least three pilots (in addition to the two Masters) were on board at all times. The other pilots of the inbound group remained at home on standby, and when a pilot had boarded an incoming ship, the next on turn rejoined the pilot vessel by land transportation to Herring Cove (about six miles from the pilotage office) or Portuguese Cove (a further four miles) from where they reached the pilot vessel on station rowboat. After disembarking, the pilots of the outbound group were returned to Halifax in a similar manner.

Pilotage revenues and the pilots' annual earnings decreased considerably after the war, while the cost of operating the pilot vessel service remained the same as illustrated by the following extract from the table of revenues and expenditures contained in the Annual Reports.

Year	No. of Pilots	Gross Revenue	Total Expenses	Remuneration of Full-time Pilot
		\$	\$	\$
1938-39.....	20	88,480	23,976	3,228
1941-42.....	39	485,016	158,119*	9,268
1942-43.....	44	399,060	157,455*	5,538
1944-45.....	42	276,677	83,004	4,817
1945-46.....	30	156,990	63,957	3,090

*Includes payments for new pilot vessel.

In 1946, the situation had deteriorated to such an extent that, if the insurance premiums that were due for the pilot vessels at the end of November had been paid out of the Pilotage Fund, there would have been no

money left to remunerate the pilots for the latter half of December and January. To resolve the problem the Department gave permission for temporary discontinuance of pilot vessel insurance to enable the pilots to receive remuneration for that period at the rate of \$300 per month.

There had been previous discussions advocating the imposition of a \$5 pilot boat charge to meet part of the operating costs and the necessary amendment to the tariff had been made but not implemented (vide p. 180). Before the Order in Council was gazetted, the shipping interests protested on the ground that the effect on the port would be detrimental. The pilots concurred. Since their financial problem could not be solved by increasing the rates, the pilots, supported by the shipping interests, recommended as an alternative that the Department assume the cost of providing suitable pilot vessels and operating them.

The pilots also pleaded for recognition of their contribution to the war effort.

(6) AUDETTE REPORT 1949 (Ex. 1330)

The Audette Committee studied the same seven Pilotage Districts reported on by Captain Slocombe in 1947. The Committee's recommendations were mainly of general application. Specific recommendations for Halifax were as follows:

- (a) The Committee disagreed with the representations of the shipping interests to the effect that the pilot vessel *Camperdown* should be used as a floating base cruising at the boarding station. They suggested the establishment of a pilotage station at some suitable location within the harbour commanding a good view of the approaches and affording shelter.
- (b) As for the Pilot Committee's request that they should have signing authority for disbursements from the Pilotage Fund, they pointed out that the grounds of complaint which motivated this submission would be removed if, as the Committee was recommending, the cost of operating the pilot vessel service and the pilot station were assumed by the Government.

This policy was later adopted and implemented under the authority of Order in Council P.C. 120-422 of January 24, 1951 (Ex. 52) for, *inter alia*, the Pilotage District of Halifax. The pilot vessel service continued to be operated by the Pilotage Authority and the pilots but the operating costs together with those of operating the District were reimbursed by the Government to the Pilotage Fund. In 1959, the Department of Transport, acting under authority of Order in Council P.C. 1959-19/1093 of August 27, 1959 (Ex. 52) assumed the full operation of the pilot vessel at Government expense. This situation still prevails (vide p. 166).

Chapter B

BRIEFS

Only one brief concerning the Halifax District was filed: the Halifax Pilots' brief (B.24, Ex. 358). In addition, specific recommendations were made during the Commission's public hearings in Halifax by Foundation Maritime Limited and by Shaw Steamship Co. Ltd.

(1) HALIFAX PILOTS' BRIEF

The brief was presented by the Pilots' Committee on behalf of the 18 pilots in the District. They are not grouped in any association or corporation.

Recommendations

The pilots' recommendations may be summed up as follows (the references after each recommendation show where the subject is dealt with in the Report):

- (1) Compulsory pilotage in lieu of the compulsory payment of pilotage dues should be adopted and made applicable to all ships of foreign registry, and to all ships of Canadian registry over 1,000 net tons, with certain exceptions for those under 1,000 net tons. (Part I, General Recommendations 22 and 23 and Halifax Recommendation No. 2.)
- (2) Exemptions from compulsory pilotage should be carefully reviewed, especially concerning ships possessing special characteristics, such as relatively small coastal tankers which can present a serious hazard to navigation and endanger public safety. (Part I, General Recommendation 22 and Halifax Recommendation No. 2.)
- (3) The present status of the pilots should be maintained. The Pilotage Authority's proposal that they become "prevailing rate employees" is unacceptable to over half the pilots. (Part I, General Recommendation 24, and pp. 206 and ff.)

- (4) Annual overhauls and repairs to pilot boats should be carried out during the summer season and not during their busiest months in the winter. There should also be closer co-operation and consultation between the Department and the pilots on all matters pertaining to the provision, maintenance and operation of the pilot boats. (p. 217.)
- (5) Records of pilots' time worked should include stand-by time. (p. 211.)
- (6) Any changes in the By-law should be mutually agreed upon by the Authority and the Pilots' Committee. (Part I, General Recommendation 19.)
- (7) The Authority should deal with all matters affecting the pilots, either collectively or individually, through the Pilots' Committee and not with individual pilots. (Part I, General Recommendation 25.)
- (8) District operations should be partly subsidized from public funds on the ground of public interest. (Part I, General Recommendations 20 and 21.)
- (9) Pilotage and pilot vessel services performed outside the District should be remunerated. (pp. 215, 546 and 576.)
- (10) In order to prevent losses pilotage dues should be paid in cash before clearance is given. (Part I, pp. 187 and ff.)
- (11) Although the By-law is satisfactory respecting licences and examinations, applicants have difficulty obtaining two years' service as Master within the 45-year age limit. If this proves too severe a restriction, consideration should be given to overcoming the difficulty. (Part I, pp. 251-253.)
- (12) The present income of the pilots is satisfactory but if any future development, such as the extension of pilotage exemptions, causes a reduction, adjustments in the system should be made to ensure adequate earnings. (Part I, C. 6 and General Recommendation 21, and pp. 210-213.)
- (13) The Pilots' Pension Fund is in a most unsatisfactory state and should be rectified by a formula whereby the pilots would come within the provisions of the Public Service Superannuation Act. (Part I, C. 10, and p. 244.)

(2) FOUNDATION MARITIME LIMITED

Foundation Maritime Limited is an old established company that owns and operates several salvage vessels and tugboats. By letter dated May 8, 1963 (Vol. 27, pp. 2907-8) it recommended:

"... increased use of radiotelephones by the Halifax pilots to give their commands to our tugboat captains. In our opinion this system is superior to that of ship's whistle and/or mouth whistle."

(pp. 203-204).

(3) SHAW STEAMSHIP COMPANY LIMITED

Shaw Steamship Co. Ltd. is a Halifax company that owns and/or charters several coastal freighters. By letter dated May 9, 1963, of general application (Vol. 27, pp. 2906-7) it recommended that pilotage be eliminated at all Canadian ports for Canadian registered vessels of 1,000 gross tons or less, when a pilot is not required, and that this Commission should not recommend payment of pilotage at ports such as Sydney and Halifax where the ships of this company do not now pay. (Part I, General Recommendations 22 and 23 and Halifax Recommendation No. 2.)

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

According to its legal definition (vide pp. 157 and ff.), the Halifax Pilotage District is a coastal District some 115 miles in length which comprises many ports, the most important being Halifax.

In practice, the District limits have always been those of the Port of Halifax and its immediate approaches, although for some time in the early years licences were issued for outports.

By referring to the contemporaneous orders made by the Governor in Council, it appears that at first the administrative policy was to create Pilotage Districts on the basis of counties and not on the basis of ports, probably with a view to reducing to a minimum the number of Districts and Authorities. During this period the following Pilotage Districts were created on the basis of counties: Digby and Annapolis, Kings and Hants, and Richmond. This was a policy of questionable legality under the scheme of organization of the 1873 Pilotage Act and was also unrealistic from a practical point of view because pilotage organization is governed by local needs. These county Districts have all disappeared and been replaced where necessary by port pilotage organizations. In Halifax, the legislation was not changed but in practice, especially since 1918 when the Minister was appointed Pilotage Authority, the District organization has been limited to the port of Halifax only.

Pilot W. H. Crook, in his evidence, described the extent of the District as from a line joining Chebucto Head and Devils Island as the seaward limit and all the waters inward extending to the head of Bedford Basin.

(2) PHYSICAL FEATURES

Halifax Harbour, including Bedford Basin, is acclaimed as one of the finest in the world. Well sheltered, deep and commodious, it is one of the principal seaports of Canada. The city and suburban communities which comprise the port, embrace the largest concentration of population in the Atlantic Provinces.

The approach to the Harbour from its seaward limits, designated by a line joining Chebucto Head and Devils Island, leads for a distance of $4\frac{1}{2}$ miles off Mauger Beach light on the west side of McNab Island, then for $2\frac{1}{2}$ miles to George Island in the main harbour, and thence for 7 miles northwesterly to the head of the landlocked waters of Bedford Basin.

The main harbour lies between the cities of Halifax and Dartmouth about $\frac{3}{4}$ of a mile apart, which narrows at its northwesterly portion where the Angus L. Macdonald Bridge with a clearance of 165 feet at high water joins the two cities.

A southeasterly extension of the main harbour, named the Eastern Passage, leads to a narrow, shallow outlet to the open sea. For about $1\frac{1}{2}$ miles the Passage provides shelter, berthing and anchorage and is an area of increasing marine activity of both a commercial and military character. Vessels, except small craft, must enter and leave *via* the main harbour.

The Northwest Arm branches from the main harbour and extends for about $2\frac{1}{2}$ miles in a northwesterly direction from the southern tip (Point Pleasant) of the city of Halifax. This area is almost exclusively used for yachting and recreational purposes.

Canada's eastern naval depot and base has long been established at Halifax and extensive naval facilities are located on both sides of the upper part of the main harbour, but mainly on the Halifax side in the vicinity of the Angus L. Macdonald Bridge, and also along the shores of Bedford Basin.

Bedford Basin provides extensive anchorage, sufficient for a large fleet of deep sea vessels. It is entered through The Narrows with a width of $1\frac{1}{2}$ cables and a depth of 5 fathoms. Its waters are extensively used for naval purposes, including training exercises, a range for degaussing ships, speed trials and compass adjusting. Commercial shipping activity extends for about a mile past The Narrows at Wright Point where the National Gypsum Co. wharf and the British American Oil Co. wharf are located, both with deep water alongside and accommodation for large vessels.

The main commercial shipping facilities extend along the western side of the main harbour from Piers B, A1, and A situated close to the north-eastern boundary of Point Pleasant Park, thence in a northerly direction along the harbour front for about 3 miles to Pier 9 that lies within The Narrows—the entrance to Bedford Basin. A short distance north of Pier A is Ocean terminals quay with a length of 2,007 feet and a least depth of 40 feet alongside where the large Atlantic passenger liners usually berth.

The many public and private commercial piers and wharfs are mostly constructed at right angles to the harbour frontage and to the flow of traffic. At the northeastern side of the harbour lies the city of Dartmouth with its many wharves and shipyards, while farther south and opposite Piers A, A1 and B, is located the Imperial Oil Company complex with its storage tanks and wharves.

A large number of underwater power and communication cables of commercial and defence character (many of them not shown on the charts) are laid across various sections of the main harbour and its approaches and familiarity with their several positions is necessary in order to anchor in case of emergency without fouling or damaging them. For this reason, prohibited anchorage (indicated by pecked lines on chart 4316 (Ex. 335)) includes the whole of the main entrance to the harbour. In addition to anchorage for quarantine and for vessels carrying explosives, there are six numbered anchorage areas in the harbour also clearly marked on the chart.

The pilots pointed out that there are a number of uncharted obstructions in the harbour. Among these are various minor, unmarked shoal grounds that would interfere with deeply laden ships; one is off Pier No. 2, Cunard wharf; two other such areas are found between Inner Automatic light-and-whistle buoy and Lichfield Shoal and Neverfail Shoal where the water is 7 fathoms 5 feet and 6 fathoms 4 feet respectively.

The main harbour and a portion of its facilities are exposed to the south and east, and heavy storms from these directions cause considerable swell at its southern extremities. Fog is the main hazard to navigation. According to statistics furnished by the pilots, in the years 1960, 1961 and 1962, there were respectively 144, 164 and 151 days with visibility at or below 2 miles. (For these statistics a day of fog is one where fog prevailed for at least 15 minutes.) The table included in the pilots' brief (Ex. 358) shows that there is no seasonable pattern and fog may occur any day of the year. The same Exhibit shows for the same years 164, 184 and 173 days when winds (not including gusts) blew for a period of time at 16 knots or over. An 11-16 knot wind is force 4 according to the Beaufort scale, i.e., "moderate breeze". The rise and fall of tides of approximately 4 to 5 feet and their currents are greatly influenced by winds. Tidal currents rarely exceed 1 knot and are not a major factor in navigation but, depending on the velocity and direction of the wind, will influence the handling of vessels while berthing or unberthing.

Halifax Harbour is ice free and open all year round. With its deep water approaches and the changing pattern of shipping, plans are in progress for improving its facilities, including a large new pier (Pier C) at an estimated cost of \$12,000,000.

At the time of the Commission's hearings the pilots considered the National Gypsum Co. wharf in Bedford Basin the most difficult to approach for berthing, although it is well fendered and of cellular construction and provides a protective cushioning effect. Problems arose, first, because it is exposed to the prevailing wind which sometimes reaches dangerous proportions, secondly, the normal approach was obstructed by buoys marking the naval degaussing range through which traffic was prohibited. Ships approaching the wharf in a northwest wind had to be manoeuvred broadside to the wind in order to parallel the wharf. This was a difficult manoeuvre even with the normal assistance of tugs. Since the situation could be greatly improved if the pilots were permitted to encroach on the prohibited area, the Commission communicated with the Naval Authorities to seek a solution. They advised that the prohibition was imposed to prevent damage to underwater equipment by ships dragging anchor or cutting adrift the northern buoys marking the end of the range, but that the risk of damage would be small if the pilots were made fully aware of the problems involved.

At a subsequent meeting between the Naval Authorities in Halifax and the Supervisor of Pilots it was decided to reposition some of the buoys and a satisfactory solution was reached (Ex. 1531(t)).

(3) MARITIME TRAFFIC

Halifax and Saint John are the two main Canadian railway terminals on the Atlantic Coast. Halifax is a terminus and port of call for shipping all the year round and a winter port for several ocean liners when the St. Lawrence River is ice-bound.

Vessels plying the District are of all types ranging from fishing vessels, of small and medium tonnage, to the largest ocean-going passenger liners, but are mostly ocean-going freighters, large and small, including oil tankers, coastal traders and the occasional large bulk carrier. Exports consist of grain, flour, lumber, gypsum, fish, apples and general merchandise, and imports of crude oil, raw sugar, motor vehicles, rubber and general merchandise. In addition to commercial traffic several regular ferry services criss-cross the harbour and, during the summer months, especially at weekends, numerous yachts and pleasure craft are in evidence.

There is a tendency to exaggerate the seasonal character of the port. It was even stated at the Commission's hearings that commercial traffic is about three times greater in the winter months compared with the rest of the year. However, statistics show that the slight increase formerly recorded in the winter months for both general and pilotage traffic is now disappearing.

There was apprehension that the opening of the St. Lawrence Seaway would jeopardize the port, but local industrial development has helped to keep traffic more uniform throughout the year. Most of these new industries import bulk cargoes, petroleum products and ore.

This traffic trend is borne out by D.O.T. statistics (for pilotage statistics vide p. 252) and also by the following shipping figures from the Dominion Bureau of Statistics which show arrivals (other than naval, fishing, pleasure craft and those of, and under, 15 NRT) of foreign and coastwise vessels for each month in the years 1962 and 1967.

	Foreign Arrivals		Coastwise Arrivals		Total Arrivals	
	1962	1967	1962	1967	1962	1967
January.....	113	87	45	48	158	135
February.....	134	79	50	40	184	119
March.....	140	73	53	43	193	116
April.....	88	80	67	44	155	124
May.....	78	60	92	71	170	131
June.....	85	46	87	83	172	129
July.....	97	56	67	76	164	132
August.....	83	53	80	61	163	114
September.....	65	52	78	62	143	114
October.....	94	52	78	67	172	119
November.....	65	55	81	55	146	110
December.....	117	55	88	65	205	120
Total.....	1,159	748	866	715	2,025	1,463

Source of Information: Ex. 1531(k).

The table shows *inter alia*:

- (a) The seasonal character of the port is disappearing as far as foreign vessels are concerned. The four months of January, February, March and December accounted for 43.5% of the foreign traffic in 1962, and for 39.3% in 1967, which is not a marked increase over the absolute average of 33.3%.
- (b) By contrast, coastal shipping in the same four months accounted for 27.3% of the coastwise traffic in 1962, and for 27.4% in 1967. This helped to spread the total traffic more evenly throughout the year as those four months accounted for 36.5% of the total traffic in 1962 and 33.5% in 1967.

The following shipping statistics provided by the Dominion Bureau of Statistics show the number of vessels of 250 net tons and over that arrived at Halifax in each of the nine years 1959 to 1967 inclusive, as well as the tonnage of foreign and coastwise cargo handled.

Year	Arrivals		Cargo Handled (Tons)	
	No. of Ships	Net Tons	Foreign	Coastwise
1959.....	1,755	6,698,656	5,589,665	1,807,491
1960.....	1,598	6,432,889	5,633,080	1,970,882
1961.....	1,685	6,225,350	5,396,480	2,108,829
1962.....	1,686	6,130,128	5,845,107	2,341,551
1963.....	1,533	5,735,645	5,856,925	2,331,566
1964.....	1,495	6,059,505	6,628,189	2,547,656
1965.....	1,515	6,413,911	6,944,594	2,603,202
1966.....	1,492	6,452,681	7,073,862	2,333,207
1967.....	1,322	5,826,023	6,537,986	2,530,127

The figures appearing in the D.B.S. table show that from 1959 to 1967 the number of vessels decreased by 24.7 per cent and the aggregate net tonnage by 13.0 per cent. However, the average net tonnage per vessel has risen from 3,817 to 4,407, an increase of 15.5 per cent.

Apart from the foregoing commercial traffic, since Halifax is Canada's largest eastern naval establishment and depot, there are frequent daily movements within the harbour of naval vessels, large and small, and the arrival and departure of Canadian and foreign warships are common occurrences.

Ferries

There are numerous *ferry* routes across the harbour maintained by the Department of National Defence and the city of Dartmouth. The Dartmouth Ferry Commission has a regular schedule between Portsmouth Street, Dartmouth and George Street, Halifax. The Dockyard ferry service may be irregular. The ferry routes criss-cross the harbour in many locations in areas frequently used for general port traffic. They operate on schedule in spite of the weather or visibility, and require caution on the part of other ships. The ferries observe the international rules of the road (there were local rules during the war). The ferries are not equipped with radar. There have been no accidents involving them in recent years.

Shelter

Since Halifax is the principal port on the eastern seaboard, it is frequently used as a port of refuge and, although ships entering a harbour for refuge are exempt from pilotage dues, the pilots are often called upon to

assist. Each year they handle disabled ships, mostly during the winter months or unusual weather conditions such as the hurricane season. In October, 1962, over thirty trawlers entered one night, probably the greatest concentration of traffic in the harbour since World War II. A sudden demand of this nature may require all the pilots to be on duty at the same time.

(4) AIDS TO NAVIGATION

The approach from seaward to Halifax Harbour is rendered comparatively safe by the absence of outlying dangers. At the time of the Commission's hearing in 1963, vessels were guided by the Sambro light vessel, moored about nine miles southeast of Chebucto Head, but it was replaced October 14, 1966, by a large light-and-whistle buoy, fitted with a radar reflector. Seven miles to the northward of this buoy is the Outer Automatic light-and-whistle buoy. The southern entrance to the harbour is marked by Chebucto Head where a light is exhibited at an elevation of 165 feet from a white, square dwelling and from where fog sound signals are also made. There is a shore-based radar at Camperdown near Chebucto Head from which ships' bearings may be obtained. It is operated by the Telecommunications and Electronics Branch of D.O.T. Five and a half miles in a northeasterly direction from Chebucto Head is Devils Island, close to Hartlen Point, which marks the extreme eastern limit of the harbour. The approaches and deep channel into the harbour are well marked by lighted bell and whistle buoys.

No complaints about aids to navigation were voiced during the Commission's hearings. However, Pilot Crook stated that a light on the Federal Building would be of distinct advantage to the pilots, since this large structure is used as a leading mark during the day. Mr. F. M. Weston, the District Marine Agent, testified that aids were efficient and that immediately upon receipt of a report of a failure all concerned were notified and steps taken to remedy it.

Since 1963, major changes and improvements have been made. In addition to the replacement of the Sambro light vessel by the large buoy previously mentioned, they are:

- (a) radio beacon established on Sambro Island;
- (b) radio marker beacon established at Hartlen Point;
- (c) radio beacon on Sable Island increased in power to extend coverage to the Halifax approach area;
- (d) fog signal on Sambro Island changed from a fog gun to a diaphone;
- (e) lighted bell buoy established off Bear Cove;
- (f) lighted buoy established off Mauger Beach;
- (g) two lighted buoys established in Eastern Passage;

- (h) a sector (tri-colour) range light established at Eastern Passage;
- (i) two lighted buoys established in The Narrows off Wright Point (entrance to Bedford Basin) (Ex. 1531(i)).

In addition, the area continues to be served by *LORAN*, a radio aid to navigation which provides a position-fixing facility over large areas of the Atlantic and Pacific Oceans for vessels equipped with a special receiver unit and plotting charts; and *DECCA NAVIGATOR*, also a radio position-finding device which operates automatically and continuously in conjunction with groups or "chains" of land-based transmitting stations. "It enables the mariner to obtain his position with a very high degree of accuracy by reading meters and referring the numbers to a *DECCA* lattice chart—an ordinary marine chart overprinted with red, green and purple numbered position lines. The meter pointers, actuated automatically by the signals from the *DECCA* stations continuously record any change in the position of the ship and can be read off as required simultaneously without manipulations."

Both systems provide prime coverage in the Halifax Harbour approach area.

Halifax generally is well provided with tugs. They are supplied by Foundation Maritime Company which, on occasion, obtains additional ones from the R.C.N.

When berthing at the Gypsum wharf, grain berths, Piers A, A1, B 2 and 3, tugs are normally used.

2. NATURE OF PILOTAGE SERVICE

The official publication, the *Nova Scotia (S.E. Coast) and Bay of Fundy Pilot*, fourth edition, 1966, describes the port of Halifax as follows:

"Halifax Harbour, the safest in this part of the world, is entered between Devils Island, situated about 4 cables south-southwestward of Hartlen Point, and Chebucto Head about 5½ miles south-southwestward. Although the dangers in the approach render great caution necessary during fogs, which usually accompany all winds from seaward, the harbour is easier of access than any other large harbour on this coast".

The Commission's Nautical Adviser, the late Captain J.S. Scott, made the following appraisal of the harbour from the navigational point of view:

"Halifax is a spacious harbour relatively free from rock and shoals and with only a weak tidal stream. Navigational hazards confronting a pilot are in the very thick and frequent summer fogs and the winter gales. All things considered, and from my own personal experience, I should say that Halifax was one of the least onerous pilotage districts.

The Halifax tugboats are powerful and efficient units and in themselves must serve to lessen to a considerable degree any preoccupations a pilot may have on berthing large vessels in winter gales".

It was stated during the Commission's hearings that pilotage was necessary to expedite traffic in the port and to permit ships' movements when fog and other adverse weather conditions prevail. Pilot W. H. Crook, licensed pilot since 1952 and the Chairman of the Pilots' Committee, testified that pilotage is essential in Halifax for large deep draught vessels. If such vessels approached the pilot boarding station during severe adverse weather conditions and no pilots were available, long delays up to several days would result. He stated that the pilots are quite conscious of the heavy cost to shipowners caused by long delays, and they endeavour to expedite with safety the movement of the ships they pilot.

Mr. Yman Hall, the Halifax Manager of Saguenay Shipping Limited, testified that his company attends to about 60 vessels making 120 arrivals and departures to and from Halifax a year and, although the Masters of these ocean-going vessels have no direct instructions to employ pilots, they all do so and are very pleased with their services.

However, Imperial Oil Limited submitted that no form of compulsory pilotage should be imposed on ships continuously engaged in coastwise trade and whose Masters and officers are thoroughly competent to navigate their ships in the various coastal ports. In their brief (B.23) they stated:

"There are many ships engaged in coast-wise trade, the masters and officers of which have spent their entire professional careers entering these ports and it is from this group that several pilotage bodies have drawn their recruits. It is unnecessary for such ships to be required to take pilots or to pay dues."

Captain T. D. Kelly, Manager of the Marine Division of Imperial Oil Limited, testified that the statement in his Company's brief referred only to Canadian flag ships wholly engaged in coastal trade and not to foreign-going ships of Canadian or other flags. His Company operates three coastal tankers, seven tankers on the Great Lakes and two self-propelled barges. The tankers sometimes interchange their normal trade routes.

The Masters of the coastal tankers have served with the Company from 19 to 30 years, and for some 10 to 15 years have plied the waters of Halifax Harbour and other ports in the Maritimes, Newfoundland and Labrador. He cited an ironical situation when a third officer of one of the coastal tankers resigned to enter the pilotage service, and the following week boarded a ship as the pilot, while the Master, who had far more experience, was not entitled to pilot his own vessel. (This statement was obviously incorrect because the only obligation on the part of the ship was to pay pilotage dues.) These coastal tankers visit Halifax more frequently than other vessels, i.e., about 60 to 70 times a year or a total of 120 to 140 pilotage trips inward and outward.

Captain Kelly further stated that years ago ships had only a magnetic compass on the bridge, but today highly sophisticated navigational instruments are placed on board and the Government has spent millions of dollars on aids to navigation in coastal areas. He charged that in these circumstances

the payment of pilotage dues, whether or not a pilot is employed, is a form of "feather-bedding". On the other hand, he considers that safety is of prime importance and that compulsory pilotage should be imposed on all foreign-going ships, including those flying the Canadian flag, and on any other ships that are only occasional visitors.

By letter dated April 18, 1963, Imperial Oil Limited informed the District Supervisor of Pilots that henceforth their vessels would dispense with the services of pilots. Since then, the Company's smaller vessels which are customarily engaged in the coastal trade do not, except under unusual circumstances, employ the services of a pilot. However, pilotage records show that their larger vessels, i.e., those engaged in international voyages, always employ pilots both for movages and for inward or outward voyages (Ex. 1531(v)).

In contrast to Saint John, a large number of non-exempt ships dispense with pilots in Halifax despite the fact they are required to pay pilotage dues. This table shows the number of trips and movages so effected, the dues yielded at full or half rates as the case may be and the percentage of their incidence:

	Trips				Movages			
	No.	%	\$	%	No.	%	\$	%
1962.....	382	10.6	8,569.98	4.4	38	4.5	604.20	3.8
1963.....	703	20.0	18,509.28	9.9	156	17.2	1,668.68	10.6
1964.....	796	21.2	17,217.17	8.5	150	14.9	1,583.18	8.9
1965.....	748	20.2	16,560.22	7.9	178	20.6	1,987.87	12.6
1966.....	574	15.7	13,175.14	6.3	136	16.7	1,601.70	10.5
1967.....	582	17.3	14,239.64	7.6	167	17.9	1,635.73	10.0

SOURCES—The data of number of trips and movages when dues were paid while pilot not employed and the revenue they yielded are taken from Ex. 1308 (D.O.T. letter Aug. 8, 1968). The total number of trips and movages on which dues were paid and the aggregate revenue yielded are taken from the annual reports, Ex. 344. Discrepancies have been noted between the total number of trips and movages computed from data in D.O.T. letter in Ex. 1308 and those of the annual reports. They are slight except for 1962 where there is a minus discrepancy of 10% (3989 against 4430). However, these discrepancies make little difference in the calculations in the table above.

Inter alia, this table prompts the following remarks:

- (a) The Halifax District has the highest incidence of non-exempt ships dispensing with pilots¹ in sharp contrast with Saint John where there are practically no such cases. The main reason is the comparative ease of local navigation which encourages those who have

¹ According to statistics, Sydney had a higher percentage up to recent years due to the CNR ferry ships being compelled to pay dues (vide p. 280).

acquired some knowledge of the port to dispense with pilots. Another reason is the extent to which the compulsory system is applied through total and partial withdrawals of relative statutory exemptions.

- (b) The vessels which dispense with pilots are usually small. The actual average, however, can not be calculated from the proportion of voyage dues paid because Canadian regular traders are required to pay only half rates. The official reports do not contain the necessary data to calculate such average tonnages exactly, but for the purpose of the Commission's inquiry this information was not deemed necessary.

The Supervisor of Pilots has experienced difficulty enforcing the compulsory payment regulations on those vessels whose relative statutory exemption (for meaning vide Part I, p. 221) (subsec. 346(e) C.S.A.) had been withdrawn by the District regulations (vide p. 166) for the sole purpose of bringing more revenue to the District, while the same vessels were allowed to retain their exemption in the District of Saint John where the navigational difficulties and dangers can not compare with the almost ideal conditions that exist in Halifax.

Included were vessels belonging to, or chartered by, the Irving Oil Company Limited, i.e., M.V. *Irving Wood*, 1640 NRT, registered in Saint John, N.B., M.V. *Irving Hemlock*, 337 NRT, registered in Nassau, and M.V. *Irving Hickory*, 327 NRT, registered in Nassau. When the Supervisor of Pilots was informed that these vessels had been entering and leaving the District without employing pilots and without paying dues, he tried to enforce payment in the belief that they were subject to the compulsory payment system in accordance with District regulations. The Irving Company declined to pay on the ground that the By-law provision, as then worded, did not apply to them. Prior to 1961, the By-law provision contained the clause "unless such steamship be otherwise exempted under the provision of the said Act". The word "otherwise" had been omitted in the new General By-law of 1961.

The Department of Justice, to which the question was submitted, advised that the Crown would not be able to establish before a Court that these ships would not be exempt from the pilotage dues which would otherwise be payable. Shortly thereafter, by an amendment to the By-law dated November 7, 1963 (P.C. 1963-1659), the contentious phrase was deleted so that there could no longer be any ambiguity (Ex. 1495 (a)).

3. ORGANIZATION

(1) PILOTAGE AUTHORITY

The Pilotage Authority is the Minister of Transport.

The District is directed locally by a Department of Transport official entitled "Supervisor", as provided in sec. 3 of the District General By-law. At the time of the Commission's hearings in May, 1963, this official was Captain A. D. Latter, who had held the position since March, 1961. The Supervisor is not formally appointed by the Pilotage Authority, but is its *de facto* representative. In his capacity as D.O.T. representative he is responsible for the premises and equipment provided by the Federal Government for the use of the local Pilotage Authority, and also for the operation and service provided by the three pilot vessels. Since the representative of the Pilotage Authority directs the pilots and is responsible for implementing the District By-law and carrying out the instructions of the Pilotage Authority, he is in charge of despatching actually as well as according to the regulations (contrary to the situation in Saint John). He attends to the financial administration of the District and since 1966 has been purported to have disciplinary powers when an accused pilot consents to be dealt with summarily by him (as to legality, vide Part I, p. 400). Until July 17, 1963, the Supervisor was assisted by a staff of 15 persons, not counting the four casual employees engaged as reliefs during the summer months for the annual leave period, i.e., an accountant, a stenographer, four despatchers and 9 crew members for the pilot vessels. On July 17, the establishment was further increased by the addition of three deckhands for the pilot vessels. On June 8, 1968, a Supervisor of Pilot Boat Machinery was added when the newly built *Canada Pilot No. 4* was transferred to Halifax from Sydney (vide p. 290) (Ex. 1535(m)) replacing *Canada Pilot No. 6*. This brought the total staff establishment to 20, including the Supervisor.

In 1962, the Department felt that the work involved did not warrant such a large establishment and proposed that the pilot vessel Masters should be responsible for despatching, thus eliminating the positions of four permanent despatchers, and further proposed to reorganize the pilot vessel service. This was among the measures designed to reduce expenditures in line with the Government's request to implement its austerity program but no action was taken in view of the opposition of both the shipping interests and the pilots.

The Pilotage Office is located in the Dominion Public Building, Halifax. The general office and the pilots' quarters overlook Queen's Wharf where the pilot vessels are based. The despatching office also affords a view of the harbour and Bedford Basin (Ex. 344). The Supervisor and his personal staff, consisting of a secretary and an accountant, work normal Civil Service hours but the Supervisor is available at any time to attend to urgent situations. Staff overtime is compensated for by extra leave.

4. PILOTS

As a group the pilots are not joined in any particular association and are represented by their Pilots' Committee. In 1963, eight of the pilots were individual members of the Canadian Merchant Service Guild.

(1) RECRUITING AND QUALIFICATIONS

Secs. 11, 12, 13 and 14 of the General By-law cover the prerequisites for a pilot's licence (vide p. 167).

There is no apprenticeship system and recruits are drawn from Master Mariners who have served in the coastal trade and are conversant with local navigation and conditions. The By-law provides that a candidate must hold a certificate of competency as Master of a foreign-going or home trade steamship (unlimited as to tonnage) and has served at least two years as Master of a vessel trading regularly into the District.

Captain A. D. Latter, the Supervisor of Pilots at the time of the Commission's hearing, testified that he had never had occasion to license a pilot during his term of office or hold examinations for pilot candidates. At that time, 17 pilots were on strength and one accepted candidate remained on the list from examinations held several years earlier. Pilot W. H. Crook stated that others on that list had been dropped because they had passed the admissible age limit of 45. He also stated that, generally speaking, the pilots were quite satisfied with the sections of the By-law covering the licensing of pilots and felt that the present standards should be maintained. By 1967 the number of pilots had been allowed to drop to 12. In December of that year an examination was held and four successful candidates were placed on the eligible list.

The By-law is silent as to the procedure for inviting candidates to an examination but in practice they are notified by local newspaper advertisements.

The examination procedure is the same as in Saint John (vide pp. 71 and ff.).

When a vacancy is being filled, the first accepted candidate on the eligible list is given a one-year probationary licence which is purported to be subject to withdrawal if at any time he is found unsuitable. According to the current practice of training and assessment, each probationary pilot is first obliged to make twelve trips with a permanent pilot as an observer. The probationary pilot's conduct, actions and general attitude are reported to the Supervisor by the active pilots, and when the Supervisor and the Pilots' Committee consider him suitable in all respects he is allowed to pilot on his own. He is recommended for a permanent licence after the expiration of the probationary year. During the trial period, each probationer is paid two-thirds of an active pilot's full share of earnings.

Re the legality of the probationary licence and the administrative decisions to which probationary pilots are subjected, reference is made to Part I, pp. 250 and ff.

For comments on the recruiting and qualification of pilots, vide p. 203.

(2) PILOTS' COMMITTEE

Sec. 5 of the General By-law stipulates that the Pilots' Committee shall consist of three pilots appointed from among themselves and holding office for one year. The Committee is to be "recognized by the Authority and the pilots as the sole agent through which representations may be made in all matters affecting the pilots collectively or individually".

The Committee had complained that the Department of Transport overlooked it in negotiations with the pilots when offering them prevailing rate employment. They were advised that subsequent dealings would be conducted with the pilots individually. The reason given by the Department for writing to the pilots individually was that the Government could hire individuals only and not groups.

COMMENT

According to the letter of subsec. 5(5) the pilots' stand was strictly correct but it must be observed that this subsection is poorly drafted and covers much more than intended. (Vide Part I, pp. 82-84, and General Recommendation 25, especially pp. 551 and 553.)

(3) LOCAL ADVISORY COMMITTEE

As in other Districts where the Minister is the Pilotage Authority a local Advisory Committee was formed in 1958 as proposed by the Department of Transport. This Committee has been active ever since and continues to render valuable service. It is composed of three representatives of the pilots and three representatives of the shipowners or agents with the Supervisor of Pilots as Chairman. It has no legal status and is not provided for in any statute, by-law or regulation. However, its terms of reference as contained in a letter from the Department of Transport to the Supervisor of Pilots dated November 5, 1958, are:

- (a) to make recommendations concerning the general operation of the District, including but not limited by the following:
 - (i) desirable amendments to the By-law and tariff;
 - (ii) policy and procedure in the recruitment of pilots, and the number of pilots;

- (iii) aids to navigation with a view to promoting efficient and safe pilotage;
- (b) to act as a Board of Inquiry to investigate pilots' misconduct, actions when involved in a casualty and non-compliance with the By-law, and to make recommendations concerning any disciplinary action considered suitable.

Although this Committee has failed in many other Districts, it has been successful in Halifax because it has restricted its activities to matters that were not contentious. For instance, at its first meeting in January, 1959, it was decided not to become involved with pilots' discipline, a subject which caused the demise of the Advisory Committees in the Quebec and Montreal Districts. The Committee had an opportunity to reaffirm its policy when it refused to investigate an accident involving the *Imperial Halifax* on May 3, 1960, while berthing at No. 4 Imperial Oil Dock (Ex. 1179). By not discussing tariffs they have prevented Committee meetings from degenerating into labour type conciliation boards, as happened in British Columbia. They study and discuss problems of common interest such as safety, aids to navigation, wharfage and tugboats.

Complaints about District Administration

The main complaint was lack of decentralization. It was pointed out that the Supervisor and his staff deal promptly and efficiently with administrative matters that can be handled locally but, due to lack of delegation of power to the Supervisor, most questions have to be referred to the Ottawa Headquarters for decision, a procedure which has proved difficult, clumsy and inadequate. The main disadvantages are:

- (a) delays because the Supervisor had to refer to Ottawa for important and sometimes urgent decisions;
- (b) confusion resulting from decisions taken in Ottawa without consulting the Supervisor, or contrary to his recommendations;
- (c) the limited power of decision of Department of Transport officials and even of the Minister as Pilotage Authority.

For comments on this situation, reference is made to General Recommendation 15 (Part I, pp. 499 and ff.).

The District Supervisor expressed the opinion that the General By-law of his District was inadequate in certain respects. In addition to the fact that it does not give enough control to the official responsible for the District, some of its provisions are out of date and others could be "wiped out completely".

(4) PILOTS' ESTABLISHMENT

The By-law provides that the number of pilots shall be determined by the Pilotage Authority after consultation with the Pilots' Committee (re legality, vide Part I, pp. 255 and ff.).

The pilots' strength has been considerably reduced in recent years, from 20 in 1960 to 12 in 1967. This was achieved in the only way permissible under the present legislation, i.e., by reducing the establishment as vacancies occurred.

Since this subject caused no problem, no evidence was adduced concerning applicable governing factors. The evidence as a whole (especially the statistical information) indicates that there are no special local considerations that should be taken into account when determining the pilots' strength, other than the basic requirement that there should be enough pilots to meet expected peak demands of prolonged duration without being unduly overworked.

Contrary to general opinion, statistics show that the port of Halifax can no longer be considered seasonal as far as general traffic and pilotage are concerned. Pilotage traffic now flows fairly regularly through the twelve months of the year (vide *Workload* pp. 222-225). The diminution of winter traffic peaks to a vanishing point has made it possible for a basic number of pilots to perform, in the aggregate, more assignments each than in previous years.

Halifax Harbour is not a tidal port in the same sense as Saint John, with the result that the movements of ships of any size can be handled at any time of the day or night, and the consequence of a possible occasional shortage of pilots would not be serious because there would be only a brief delay until a pilot became available.

Care should be taken not to consider the workload of one individual pilot on a given day as a basis for appraising the workload and working conditions of the other pilots, i.e., if the day's workload of this pilot results from an internal arrangement by which daily assignments have been unevenly shared among those available for duty. Such a situation is created by pilots taking unofficial leave or being divided into watches rather than employed on a strict tour de rôle with adequate periods of rest between assignments.

Because of the direct relation between the number of pilots on strength and their actual remuneration through the pooling system, the pilots' level of remuneration has not only been maintained but has increased without resorting to an increase in pilotage rates, despite a significant decrease in pilotage traffic since the peak of 1964.

COMMENTS

The considerable reduction in the pilots' strength that has occurred since 1960 is a striking example of what can be done to increase efficiency and improve the pilots' remuneration and working conditions by periodically reviewing establishment requirements in the light of changing conditions. It is prejudicial to the pilots' competency if their number is greater than needed to meet the actual demand because their opportunities to maintain and improve their *expertise* by constant practice are reduced. Furthermore, an overloaded establishment can not be justified in a state-controlled service which is heavily subsidized from public funds, nor would it be justifiable even if wholly supported by shipping interests and under legislation which fixed the price to the service to guarantee each pilot on strength an adequate income. It should be borne in mind that limiting the number of pilots in a District amounts to restricting a field of activity and that such action can not be justified except in the public interest, which is to provide sufficient pilots with a high degree of *expertise* receiving a remuneration commensurate with their qualifications and responsibilities. A pilotage organization should not exist to create jobs and the number of pilots should not be greater than realistic service requirements actually justify.

(5) SHIPPING CASUALTIES, INVESTIGATIONS, REAPPRAISAL
AND DISCIPLINE

In the last decade there has not been a serious case of disciplinary action taken against a Halifax pilot, although a severe reprimand was issued after the *Imperial Halifax* incident and there may have been informal cautions.

The Halifax pilots' casualty record is good but certain improvements are indicated.

In the period 1958-1967 there were 72 shipping casualties or incidents involving pilots, of which all but two were of a minor nature. Appendix C is a comprehensive table of these accompanied by a brief summary of the 21 casualties in 1965-66-67. Since 1958, only five occurred while under way navigating and might have had serious consequences. The other events occurred while berthing, unberthing or anchoring which, at first sight, would indicate room for improvement in the pilots' competence in shiphandling or teamwork with tug Masters. Errors on the part of Masters, crews and tugs are causes of accidents over which the pilots have no control, unless perchance they are the result of poor teamwork. Pilots with their local knowledge and experience are expected to contend, among other things, with adverse winds, currents, tides, and the handling of dead ships. When tugs are used the pilot is in charge of the operation and responsible for its success. The frequency of minor accidents may well indicate a lack of competency in shiphandling

and should prompt an investigation and the necessary remedial action. This applies *a fortiori* where the causes are errors in manoeuvring or poor teamwork.

Imperial Oil Ltd. complained about numerous instances of its wharves being struck, causing considerable damage. The most serious occurred May 3, 1960, when in clear, fine weather and light wind the *Imperial Halifax* with a pilot aboard struck No. 4 Oil Dock causing damage to the ship resulting in repairs costing \$10,000 plus time lost valued at \$20,000. A Preliminary Inquiry found that the basic cause of the accident was the excessive speed of the vessel approaching the wharf. While the evidence was contradictory whether the Master had taken charge of navigation, it was considered that the pilot had failed in his duty by not warning the Master that the speed of the vessel was excessive. The Supervisor of Pilots was instructed to have the pilot appear before him and "to issue him a severe reprimand" for his part in the accident, resulting from poor shiphandling (Ex. 1179).

Foundation Maritime Ltd. recommended as a remedial measure increased use of radiotelephone by the pilots to give orders to the tugs. In their opinion, this is superior to ship's whistle and mouth whistle. The Supervisor reported that he had difficulty enforcing the use of radiotelephones by the pilots despite his written directions to that effect. This might be attributed to the fact that the sets then issued to the pilots by the Department of Transport were heavy and bulky. Pilot Crook had not found them very useful because they were sometimes out of repair and at other times the tugs used were not equipped to receive radio messages.

This situation has now been corrected. In a letter dated September 10, 1968, D.O.T. reported (Ex. 1531(s)):

"Each pilot is supplied with a Motorola Handie-Talkie F.M. radio of the H.T. series. These sets are fitted to work on channel 16 (156.8) and channel 11 (156.55). Each pilot also is equipped with a charger and a leather carrying case, complete with a shoulder strap. In addition there are three special sets held in Halifax for the purpose of breakdown back-up. This equipment was issued by the Department of Transport and is maintained by the Marine Agency Telecom Workshop.

The pilots make full use of their portable radios in communicating with tow boats. The whistle system of orders is only used when a pilot's portable radio fails".

COMMENTS

The efficiency of the service and the good safety record of the Halifax pilots demonstrate the general adequacy of the present system of recruiting and qualifying pilots. However, it is considered that adoption of the grade system would be an improvement. Although navigational difficulties in the harbour are not great, these will increase as larger ships are involved. In the interest of safety and efficiency, such assignments should be handled by the most experienced and skilled pilots. Experience has shown that a grade system should be adopted to achieve this aim.

(6) LEAVE OF ABSENCE

Subsec. 24(1) of the General By-law provides for 21 days annual leave "at a time to be determined by the Supervisor". This is generally granted during the summer months of July and August. The By-law also provides the customary leave for sickness and injury.

However, the situation at the time of the Commission's hearing in 1963 was totally different because the pilots had arranged among themselves for additional unofficial leave called periods of standby duty. During the winter season, eight weeks of active duty were followed by a week on standby duty with the result that, during the then busy season in 1962, 16 pilots out of 18 were on the tour de rôle and the other two were on standby.

The schedule for the week off was arranged by the Pilots' Committee which gave the Supervisor the names of the two pilots who were to be on standby duty each week from November to April (Ex. 373). It was explained that this arrangement produced the same result as the system prior to 1960 when two pilots were employed each week as Master of the pilot vessel.

From April to November, half the pilots took alternate weeks off, except in July and August when the official annual leave was added. The result was that half the pilots had a full month off in July and the other half in August. The schedule for this leave was also drawn up by the Pilots' Committee.

During his standby week, a pilot is technically on the tour de rôle and could be called if needed. The Supervisor stated that he never had occasion to call a pilot on standby duty and that these arrangements had never delayed shipping. Captain F. S. Slocombe, Chief of the Nautical and Pilotage Division of the Department of Transport, stated that the Department had no desire to regularize pilots' arrangements for unofficial leave, adding that, at the same time, they had no objection to such an internal agreement provided the service was adequately performed.

This system of unofficial leave has been changed a number of times since 1963 to adjust to the traffic pattern and to the reduction in the number of pilots. At the present time, the pilots on strength enjoy a work cycle of three weeks the year round. During the first two they are on active tour de rôle and available for call as required and during the third they are on standby duty. However, if an unexpectedly large volume of traffic develops, (up to late 1968 it had not) these pilots may be recalled. In addition, the pilots are entitled to the three-week annual vacation stipulated in the By-law to be taken when the Supervisor directs, usually in the summer. The Commission was informed that because traffic in the past was relatively lighter during the summer this arrangement had not affected the pilotage operations. However, since summer and winter traffic is becoming more even, the choice of vacation time may well be subject to some restrictions in the future (Ex.

1531(m)). Under such a revised system the pilots enjoy approximately 126 days of leave in a year, being on active tour de rôle the rest of the year, Saturdays, Sundays and legal holidays included.

(7) PILOTS' STATUS

Except in the early days, the Halifax pilots as individuals have never enjoyed the full privileges of self-employed free entrepreneurs. When by virtue of the 1920 General By-law the Minister as Pilotage Authority became responsible for providing pilotage services, the pilots themselves (as pointed out by the Robb Commission) had already abandoned any competition remaining through the system of companies of pilots, were making assignments according to a tour de rôle and pooling their earnings.

Since 1920, the pilots have been *de facto* employees of their Authority, the full conditions of their employment being set out in local legislation, i.e., in the By-law, which deprives them of freedom to exercise their profession by forbidding them to undertake pilotage except as directed by the Pilotage Authority's representative who is in charge of despatching, and which also deprives them of the right to retain the dues they earn. Up to 1940, their remuneration took the form of a salary paid out of monthly District revenues as a final charge. The amount of the salary was fixed in the regulations but, if funds were insufficient, the amount of each pilot's salary was reduced to an equal share of the net revenue. In 1940, the ceiling was removed.

The main drawback to such a status is uncertainty about the amount of salary because it is determined by a number of factors over which the pilots have no control (the situation that developed in the Sydney District after the end of the War is a concrete example (vide pp. 282 and ff). Hence, the pilots are constantly striving to enhance their security by asking for higher rates when pilotage is in great demand, thus producing a higher revenue to compensate for inadequate income when, for any reason, the demand is low. This situation has often occurred in the past and will no doubt arise in the future.

Under the present system, the pilots have no legal right to be heard before regulations governing their working conditions or affecting their earnings are made, or to appeal them once they are made. However, it has generally been the policy of the Pilotage Authority to consult the pilots beforehand and, in most cases, to leave the pilots free to bargain with the recognized representatives of shipping over tariff changes and conditions of work. Following such consultations, the Pilotage Authority automatically reproduced in its regulations any agreement arrived at and rarely took any other action. This system has caused both the shipping interests and the pilots considerable contention and frustration and both sides have complained, although from different points of view.

It was this problem added to the preposterous situation regarding their Pension Fund that prompted the Halifax pilots to seek the status of Crown employees in 1958.

The first step was initiated by the Pilots' Committee in a letter to the Superintendent of Pilots in Halifax, dated March 10, 1958. When nothing concrete resulted, the Pilots' Committee wrote directly to the Minister of Transport Feb. 20, 1959, asking him whether as Pilotage Authority he would extend to the Halifax pilots the opportunity he had offered to the Kingston pilots "to become civil servants at the same salary they now received".

The Minister replied in the affirmative on March 9 pointing out that, since circumstances vary so widely from one Pilotage District to another, each case had to be approached individually and required a separate study and, if they wished to pursue the matter further, the appropriate course of action would be for them to deal directly with the officials of his Department.

This was done, and on July 14, 1961, after much preparatory work in Ottawa a concrete proposal which had received approval in principle from Treasury Board was made to the Halifax pilots. The gist of the proposal was that all active pilots would become Crown employees as prevailing rate employees at an initial annual rate of pay of \$10,000 plus fringe benefits (each pilot's average "take home pay" for 1960 had been \$10,052.44 without any pension or other fringe benefits). In exchange for the transfer of the accumulated assets of the insolvent Pension Fund the Government would assume its liabilities. The proposal contained provisions for superannuation, death benefits, insurance, annual leave, sick leave, legal holidays and Workmen's Compensation protection.

The proposal was studied at a meeting held July 19, 1961, at Halifax which was attended by 15 of the 19 pilots, including all the members of the Pilots' Committee, 4 representatives of the Department of Transport and the local Supervisor.

On July 24, 1961, the Pilots' Committee wrote to the District Supervisor setting out three points which, if agreed to, would make the proposal more acceptable to the pilots:

- "1. The annual salary should be raised to \$12,000. Hours worked to include time when first alerted for a job until pilot card deposited in the office.
2. The individual equity or share in the Halifax Pilots Pension Fund should be estimated and transferred to the Civil Service fund so that some portion of past service would be retroactive for the pilot on becoming an employee of the Department.
3. A bank of time—to be estimated on past service as a pilot—be credited to his account for sick and vacation benefits."

On December 20, 1962, a modified proposal was sent to all concerned and the pilots were requested to make their decision known within ten days. The delay incurred in replying to the pilots' letter of July 21, 1961, was due

to the extensive actuarial computations entailed in devising a proposal to give the pilots vested rights under the Civil Service Superannuation Act for past services in return for surrendering the Halifax Pension Fund to the Crown.

The modified proposal assured the pilots security of tenure and guaranteed limited recognition for past services regarding superannuation benefits, annual leave and sick leave. The proposed annual salary remained unchanged, i.e., \$10,000 inclusive of all overtime worked.

All pilots replied, as requested, but raised many questions and an exchange of correspondence ensued relating to the amount of salary, working conditions and the number of pilots.

On March 4, 1963, Captain D. R. Jones, Superintendent of Pilotage in Ottawa, in a circular letter replied to all the queries and objections of the pilots. The main points were:

- (a) The governing policy was to establish prevailing rates of pay comparable to the rates paid in industry in the locality or immediate vicinity for similar work performed, taking into consideration the nature of the work, hours of work, fringe benefits and other pertinent matters. The Department of Labour was responsible for carrying out these studies, submitting its recommendation to the Treasury Board for final approval. Under this policy no effort would be made to establish a uniform pilot's salary across the country and, therefore, comparisons were not made between the various Districts.
- (b) The question of salary would not be negotiable by the pilots or pilots' associations but they would be free to submit briefs and other data for consideration through normal channels. They were told that it was the normal practice to review the salaries of prevailing rate employees at least once during every two-year period. It was not the Government's policy to include a cost of living clause or guarantee an increase in wages due to rising cost of living. However, this aspect was indirectly considered when the rate established was compared to the rates in private industry which might have made gains due to the cost of living.
- (c) Statutory holidays, not counting Sundays, would be replaced by days of additional leave.
- (d) There was no intention of decreasing the pilots' strength by lay-offs. However, it was pointed out that the question of strength would be reassessed. It was expected that when the proposed regulations to abandon the compulsory payment of pilotage dues were passed there would be a reduction in the demand for pilotage. It was estimated that the pilots on strength would then be eventually reduced through normal depletion to approximately ten or twelve.

- (e) With regard to the pilots' rôle in fixing their working conditions, the normal bargaining procedure available to Government employees would apply.

The scheme as amended was approved unconditionally by nine pilots but the nine others rejected it in a joint letter on the grounds that the proposals on salary, pilots' establishment and workload were unsatisfactory. At the same time, they indicated their willingness to reconsider their decision if the Departmental proposals were revised to increase the annual salary to \$12,000 with a workload based on 16 permanent pilots carrying a total annual workload of 400 assignments, which was the workload then prevailing.

The Department of Transport immediately replied that it was not in a position to alter the basic conditions of employment pointing out in particular that the suggestion to fix the establishment at 16 pilots was unacceptable because it was the Government's policy to regard such matters as a prerogative of management.

A few days later, on April 25, 1963, DOT wrote to all pilots individually indicating that unless a reasonable majority of the pilots agreed to the proposal by May 15 the matter would not be pursued further. The dissident pilots remained adamant and requested that in the circumstances the situation remain unchanged until the Report of this Royal Commission was rendered.

From representations made during the public hearings of the Commission it appears there were other reasons why this group did not favour the proposal. Their main point was that, despite the explanations they had received, it was still not clear what would be their situation. They felt that the status of prevailing rate employees did not apply to pilots and they found the process unrealistically complicated and unsatisfactory, e.g., having to deal with three different Departments in order to obtain a change in their salary or working conditions. They felt that by agreeing to the proposal they would lose what little freedom they still enjoyed in a system that had its advantages and whose implications they understood.

There was also the insecurity of the prevailing rate system. A Department of Labour official who attended the last meeting had tried to explain how the system worked and pointed out that the periodical readjustment following the Department of Labour findings might be either a decrease or an increase. As far as the Department of Transport was concerned the only guarantee it could give was their experience in other Districts, pointing out that in the Port Weller-Sarnia area the pilots had received two increases since they became prevailing rate employees. The pilots were told that they could not be classified as civil servants because the remuneration they would receive would compare with senior civil servants. However, they were impressed by the proposal and did not object in principle to becoming Crown employees.

Because the substantial majority requested was never reached, the Halifax pilots have so far retained their *de facto* employee status. Since 1962, older pilots have retired drawing only the small pension benefits they had acquired prior to the abolition of the Pension Fund as of 1956. As stated earlier, they have not been replaced and the pilots' strength is now twelve (for exchange of correspondence and proposals from April 28, 1958, to May 25, 1964, vide Ex. 1175).

COMMENTS

The prevailing rate employee proposal put forward by the Department of Transport is not what this Commission has in mind when it suggests, and recommends in certain cases, that pilots become Crown employees.

The Commission has had the opportunity to appraise the adequacy of the prevailing rate system (as defined by the Prevailing Rate Employees General Regulations, 1963, as amended, Ex. 1007) in its relationship to pilotage organization and has come to the conclusion that its failings are such that it is not acceptable nor is it applicable in law. This question is fully dealt with in Part III, Section Four and in Part V, Great Lakes Districts Nos. 2 and 3, where such a system has been in effect since 1959.

The Commission considers that any attempt to appoint pilots under the Public Service Employment Act (14-15-16 Eliz. II c. 71) is bound to fail because pilots do not fit, legally or otherwise, into any existing classification of positions and employees in the public service. The Commission believes that the occupation of pilot should be treated on an *ad hoc* basis under appropriate provisions in the proposed pilotage statute which should clearly state that, except to the extent specified, the terms and conditions of employment of pilots are not subject to the provisions of any other enactment relating to personnel management in the public service, including the Public Service Staff Relations Act (14-15-16 Eliz. II c. 72) (vide Part I, p. 547).

Whether or not the pilots are Crown employees or retain their *de facto* status, there should be little difference in the organization of the pilotage service and the working conditions of pilots. If they become true employees, the two main differences will be:

- (a) Their remuneration will be guaranteed and will not depend on District earnings; they will also be granted the various fringe benefits accruing to Crown employees (General Recommendation 39, Part I, p. 581).
- (b) Equal sharing of the workload (a prerequisite to a remunerative system based on pooling) will not apply.

The pilots as Crown employees would be employees of their Pilotage Authority. This is a mandatory prerequisite to avoid centralization and dual authority (General Recommendation 15, pp. 499 and ff.). The Pilotage Au-

thority should be a locally self-governing public corporation whose powers are derived from legislation (General Recommendation 8, Part I, pp. 476 and ff., General Recommendation 18, Part I, pp. 510 and ff. and General Recommendation 20, pp. 521 and ff.).

The employment of a pilot as employee of its Pilotage Authority should last as long as he retains his licence, the duration of the licence (re permanent and temporary licences, vide Part I, pp. 264 and ff.) being governed as at present by legislation, i.e., it may be suspended or withdrawn as provided in legislation through the same reappraisal process whatever the pilot's status (General Recommendations 26-37, Part I, pp. 556-580). The Pilotage Authority would not, and should not, enjoy the normal power of an employer to discharge an employee unilaterally (vide Part I, p. 301 and ff. and General Recommendation 12, p. 492).

The salary would be a fixed amount for a given period of duty plus higher pay for overtime or extra duty in order to maintain the incentive to work in periods of peak demand. The level of remuneration should vary with grade.

The criteria for fixing salaries should be the same as for fixing target income. The prevailing rate method should not be used because in a given region there is no similar category of workers with whom comparison can be made. Furthermore, because of the great differences in working conditions and requirements in each District such a comparison between Districts is also misleading. Remuneration combined with working conditions should be such that highly qualified mariners can be attracted to the service (vide Part I, p. 141, 3rd para.; p. 146, 2nd para.).

Remuneration should be based on availability for duty during a full year taking into account allowable periods of leave and rest periods between assignments. Daily availability should be on a 24-hour basis and, for this reason, the occupation of pilot should not be compared with that of any other public servant. It is a requirement of the pilots' profession that they be available whenever the demand arises and, therefore, irregularity of assignments must be accepted.

However, actual time on duty is another matter and an unusual number of assignments or an unusual period of duty should be compensated by extra remuneration. To establish entitlement to extra remuneration each Pilotage Authority should determine the basic duty requirement which a pilot may be called upon to perform in any day. Such duty periods may be fixed in terms of assignments during a given period, or in terms of hours per day, or a combination of both. The method used and the definition of the basic duty requirement should be what is best suited to meet the needs of the service in each District. The many determining factors are local circumstances, the level of demand for services, the type of pilotage and the average duration of assignments, which factors vary from District to District.

The assignment method generally answers service requirements best. It is indicated in Districts where the demand for pilotage fluctuates markedly during the twelve months and where, due to factors beyond control, the duration of similar assignments often varies substantially. With such a system the normal duty period should be fixed in the regulations to coincide with the number of various types of assignment pilots may be required to perform per day (or per week) during peak periods, after due allowance for reasonable periods of rest.

The "hours-per-day" method would apply only where both the demand for pilotage and the duration of assignments are fairly constant. In this case the criterion for setting the number of hours per day should be the normal longest duration of each type of assignment, with the result that a normal assignment should never call for overtime pay.

For calculating overtime, if the "hours-per-day" method is used (and in all cases for calculating duty statistics), "duty time" (as opposed to standby time) should be defined, as comprising the whole period from the moment a pilot leaves for an assignment until he returns. The method used by the State of Queensland in Australia to calculate duty time (vide Part I, p. 779, 2nd para.) is a good example: time spent actually piloting counts full time, while travelling time and idle time on assignments count one third.

Furthermore, in order to avoid disputes about travelling time (because the actual travelling time for a given assignment may vary considerably depending on numerous factors some of which are beyond the pilots' control), it is considered that an adequate average travelling time figure should be fixed by District regulation for each type of assignment and should apply whether the actual time is more or less.

There should be no difficulty calculating actual time spent on board, i.e., from ordered time or the time a pilot reported for duty, whichever is later, to the time he disembarks, because these data appear on the pilot's source form. Depending on the kind of assignment and its normal duration, the pilots could be called upon to perform more than one assignment per day, provided adequate rest periods are allowed as established by District regulations which take into account local circumstances and requirements.

The discomfort of night duty and the inconvenience of unsettled hours, which are normal occupational requirements of pilots, should be taken into consideration when fixing the basic remuneration for a given workload. This could be achieved either by fixing a smaller basic workload, or a higher basic remuneration, or a combination of both, compared to other walks of life for persons working regular daytime hours.

As stated in Recommendation 24, pilots should be allowed to become Crown employees of their Pilotage Authority only when complete control of the service by the Pilotage Authority is required in the public interest. In this event, nothing which affects the efficiency and quality of the service should be

left to the hazard of negotiations but should be settled by legislation (General Recommendation 14, Part I, pp. 495 and ff. and General Recommendation 17, Part I, pp. 507 and 509). In this regard, the situation should not differ in any way whether the pilots are *de facto* employees or salaried employees or salaried employees of their Authority. In both cases, the questions of remuneration, conditions of work and organization for the provision of services should all be settled by regulations made by the Pilotage Authority (Commission's General Recommendation 14, p. 498 and Part I, C.8, pp.301 and ff.). Approval of the regulations and the budget, and appeal procedure, as described in the Commission's General Recommendations 19, 20 and 21, would give the pilots (either individually or as a group), the shipping interests, and also the general public, adequate means and opportunity to defend their rights, to make their points of view known and to have any regulation revised when warranted.

As aforesaid, the proposed Pilotage Act should specify that no other statute affects the pilots' remuneration, conditions of work and employer-employee relations, except to the extent specifically made applicable by an appropriate provision in the new Act. Furthermore, whether they are *de facto* or true employees of their Pilotage Authority, the pilots in each District should, as a group, be a statutory corporate body as recommended in General Recommendation 25 (Part I, p. 549).

5. PILOTAGE OPERATIONS

If not delayed by fog or interrupted by extreme weather conditions, pilotage operations are conducted on a 24-hour basis. The entrance to the harbour is exposed to easterly and southeasterly gales and there are occasions when it is most difficult and dangerous to embark from the pilot vessel in the boarding area.

(1) PILOT STATION

The Department of Transport provides the pilots with free accommodation in the same building as the pilotage office, which includes sleeping quarters.

COMMENT

There appears no valid reason for maintaining sleeping accommodation. It was undoubtedly needed when the pilots were despatched from the station but not now when despatching is generally planned in advance and assignments given by radiotelephone and land telephone. Adequate vehicular transportation enables the pilots to reach the pilot vessel wharf or ships at their berths with little delay. The few occasions when despatching may be more convenient from the station do not warrant permanent sleeping quarters in the pilot station.

(2) PILOT BOARDING STATION

During normal weather conditions vessels are boarded in the vicinity of the Inner Automatic whistle-buoy off Portuguese Shoal. On those occasions when the sea is too rough for the pilot vessel to maintain station in the area, the normal procedure is for the Master of the pilot vessel to send a radio message to all approaching vessels advising them that the pilot vessel may be operating in the more sheltered waters off Mars Rock whistle-buoy, about three miles northwest of the usual station. Occasionally the pilot vessel leads ships through the harbour entrance to a position where it is safe for the pilot to board. In addition, when the Master of the pilot vessel wishes to communicate with a particular vessel he can do so with his ship-to-ship radiotelephone, if the other vessel is so equipped, or through the local radio station by relaying the message through the pilot station. On very rare occasions, generally when fog prevails or a vessel does not carry a large scale chart of the area, the pilot vessel may be required to meet an incoming vessel a mile or more to seaward of the normal boarding area.

When rough seas prevail the pilot vessel endeavours to find a sheltered area for the pilot to board because boarding at the seaward station is fraught with danger and attempts to do so have resulted in serious injuries to pilots. On these occasions the pilots use a Jacob's ladder to board because it is impractical and dangerous to use the ship's accommodation ladder. At the time of the Commission's hearings two pilots were recovering from injuries sustained in this manner: pilot R.M. Betts, a knee injury, November 20, 1962, and pilot E.L. Croft, a back injury, December 8, 1962. Pilot Betts retired June 17, 1963, at the age of 70 without returning to duty, and pilot Croft was off duty for exactly a year.

(3) PILOT VESSEL SERVICE

Since May 14, 1948, the pilot vessel service has been operated by the Department of Transport. The pilot vessels are based at Queen's wharf which is near the pilot station and easily seen from the pilotage office.

The service was designed to improve the pilots' working conditions by providing them with prompt transportation to and from trips and movages, thus allowing them to spend more time at home. Two pilot vessels are required to achieve this aim on account of the size of the harbour and the seven-mile distance from the pilot vessel harbour wharf to the seaward boarding area. One vessel exclusively provides service at the seaward boarding area by conveying pilots as required from the harbour to incoming ships and returning those disembarked from outbound ships. The second pilot vessel, which was primarily intended to provide service for vessels at anchor in the harbour, is used extensively to transport pilots to or from the piers and wharves. It is also used to transport pilots to or from the seaward pilot vessel

on those occasions when service to ships in the boarding area does not allow sufficient time (about 3 hrs.) for the seaward pilot vessel to transport the pilots to or from the harbour.

In addition, pilot vessels are occasionally used for official duties, if available, e.g. air-sea rescue, transporting Government officials or Department employees, servicing buoys and carrying out surveys connected with shipping casualties. The pilots stated in their evidence that the pilot vessels should be restricted to their own use but in their brief they were not so emphatic, merely recommending that such incidental use of the pilot vessels should never interfere with prompt pilotage service. From the evidence adduced at the Commission's hearing such use of the pilot vessel appears to be minimal. In 1961-62, there were three trips to Shut-in Island to survey a wreck, the relief pilot vessel was used for three days as a picket boat during races and the harbour pilot vessel made two trips to carry research staff. On none of these occasions did the pilotage service suffer any inconvenience. It is considered that all possible official use should be made of the pilot vessels, thereby avoiding unnecessary expenditure of public money. With proper control and planning there is little danger that the pilotage service will lose priority or suffer delay.

Before May 14, 1948, the pilots were stationed in watches on board large pilot vessels cruising off Chebucto Head and boarded incoming ships from rowboats carried by the pilot vessels. The pilots slept and lived on board. This was very costly as well as unnecessary in view of modern radio communications. It was decided to dispose of one of the vessels and use the other as a floating base off Mauger Beach inside the harbour about 4 miles from the boarding area and take the pilots out to meet vessels. This decision agitated the shipping agents in Halifax. They felt that inefficiency would result and adversely affect trade. Nevertheless, the plan was implemented to the eventual satisfaction of all concerned until it was replaced by the present system.

Three pilot vessels are used:

- (a) *Canada Pilot No. 5*, a 56-foot wooden vessel built in 1953, equipped with radar and VHF and MHF radiotelephone, is used as the outside pilot vessel and provides most of the service.
- (b) *Canada Pilot No. 6*, a 42-foot 9-inch steel vessel, built in 1956, equipped with radiotelephone only, is the harbour pilot vessel. It has been replaced since May 1, 1968, by *Canada Pilot No. 4* from Sydney (vide p. 290).
- (c) *M.V. General Page*, a 53-foot wooden vessel built in 1943, equipped with radar and radiotelephone, serves as the relief pilot vessel and replaces either of the two others when required.

The pilots have expressed their satisfaction with the pilot vessels.

The personnel assigned to these three pilot vessels are three certificated launchmen Masters, three engineers, three launchmen and since July 17, 1963, three deckhands. Casual employees, generally recruited from college students with sea experience, are hired as relief personnel during the period of annual leave.

The outside pilot vessel is manned by a crew of two, i.e., Master and engineer. A recommendation was made to increase the number to three in the interest of safety, thus following the practice adopted prior to 1960 when the pilots themselves acted as Masters of the pilot vessels. The recommendation was made in 1963 and again in 1964 by the Supervisor of Pilots on the ground of safety, since this vessel is often at the seaward station for 10 or 12 hours without re-entering the harbour. In addition, the increase would have allowed the engineer on board to attend more fully to his engineering responsibilities, 80 per cent of his time being spent serving as a deckhand. This recommendation was refused by the Department of Transport on the ground that an additional crew member was not warranted for so small a vessel. The relief pilot vessel is not manned when on standby.

In 1962, as part of the austerity program the Department of Transport attempted to reduce the ever increasing cost of the pilot vessel service by a complete reorganization. But due to the immediate and determined opposition of both the pilots and the shipping interests no action was taken and the operational deficit borne by the Government has increased steadily from year to year. The analysis of the total cost of pilotage for the years 1961 to 1965 made by the Commission's financial consultants shows that the net cost of the pilot vessel service to the Government rose from \$61,000 to \$109,000, i.e., almost two thirds of the indirect subsidies from the Government to the Halifax pilotage service (Part I, pp. 675-676). In 1967, the cost of operating the pilot vessels, not counting depreciation, amounted to \$108,029.23 of which wages and allowances for their crews amounted to \$80,191.89 (Ex. 344).

The Department had considered decommissioning *General Page*, which was expensive to repair, and replacing *Canada Pilot No. 6* by a 26-foot fiberglass boat to be used solely for harbour duties. Furthermore, the Department felt that the harbour vessel should be used less frequently to carry pilots for harbour assignments and that their transportation should be by car when this could reasonably be done. The Department's views were that, as much as possible, the harbour pilot vessel should be restricted to providing pilot vessel service to vessels at anchor, and that the shuttle service by the seaward pilot vessel should be curtailed whenever a disembarked outward pilot could attend to an inward assignment.

The pilots strongly opposed the Department's proposal. They felt that, especially during bad weather when the need for pilots is greater, it would be dangerous for a 26-foot boat to go alongside a ship in the harbour. They also opposed abandoning the standby pilot vessel because there would be no

suitable craft readily available to charter in case of a breakdown. However, this problem does not seem serious since a relief vessel has often been obtained from the R.C.N.

The Supervisor of Pilots expressed the view that two faster and more suitable vessels would suffice, provided the practice of transporting pilots by water to places that could be reached by land was abandoned. He pointed out, however, that it would be necessary to increase the time for the notice of requirement for boarding in the harbour from one hour to three hours so as to allow the pilots time to reach any berth after receiving their assignment.

Pilot Crook agreed that land transportation could well be used to service any berth in the harbour and stated that he often used it himself. He pointed out, however, that one hour's notice would be insufficient, that travel should not be by public transportation and that when land transportation is interrupted by snow storms the quickest way to travel is by water. He further stated that the pilots are willing to board ships from tugs but tugs are not always employed to assist vessels.

COMMENTS

The cost of the pilot vessel service at Halifax is unduly high. In 1965, it amounted to \$138,990, i.e., 34% of the total cost of the District service, 7% of which was borne by shipping through pilot boat charges, and 27% by the Crown. These costs have been increasing ever since.

From time to time the situation must be reassessed to determine whether the organization of the pilot vessel service needs to be adjusted in the light of changing requirements. Every reasonable effort should be made to reduce these costs, especially since the District has to be heavily subsidized to meet them.

The Commission does not possess the necessary data to enable it to assess the situation fully. This should be the responsibility of the Pilotage Authority after, *inter alia*, gathering detailed data on traffic requirements and pilots' workload and assessing the possibility of securing water transportation from other sources in case of emergency.

It should not be taken as a basic principle of organization that the pilots must never be kept waiting at the boarding station. It is part of their responsibility to make themselves available to incoming vessels and arrange for their return transportation to land after completing outward assignments. This is a matter of internal arrangement after weighing the pros and cons. At the same time, it should be noted that, while waiting for vessels at the boarding station is part of the pilots' workload, every reasonable effort should be made to improve their working conditions and employ their time to the best advantage.

If the demand at the boarding station increases, the solution must be a return to the previous system of keeping a large pilot vessel constantly on station with smaller boats to transport pilots to and from vessels and shore. This is the system still in effect at many busy ports around the world, e.g., New York.

However, the decreased pilotage traffic in Halifax (an average of about 10 assignments per day in 1967) does not warrant such an expensive system. The one in effect now (which was adopted on account of the time element for travel between the pilot vessel base and the boarding station) has proved very costly. Part of the solution may lie in a speedier vessel and/or relocation of the pilot vessel base at a suitable site nearer the boarding station (e.g., Portuguese Cove) which is easily accessible by land and sea.

Pilot Vessel Disasters And Casualties

The pilot vessel service at Halifax has had three casualties since early 1940. The most serious was the collision March 28, 1940, at the boarding station, between the pilot vessel *Hebridean* and the inward bound vessel S. S. *Esmond* which resulted in the loss of nine lives including six pilots. In 1944, the pilot vessel *Camperdown* was wrecked, and in 1963, the pilot vessel *General Page* grounded.

On March 28, 1940, the pilot vessel *Hebridean* was on station with a large number of pilots on board to service a convoy. When the first vessel, S.S. *Esmond*, arrived, the *Hebridean* approached and a pilot was sent across by row boat, in accordance with the practice followed at the time. When the *Hebridean* attempted to cross the bow of the *Esmond*, which was moving just enough to maintain steerage way, a collision occurred. The night was dark but the weather was fine and visibility was good. The Court of Formal Investigation found that the *Hebridean's* Master was guilty of an error of judgement in attempting to cross the bow of the *Esmond* without allowing a proper margin for safety. The Court added that there was the possibility of an engine failure at the crucial moment (Ex. 356).

On February 24, 1944, at approximately 5 a.m., the pilot vessel *Camp-erdown* under the command of a pilot stranded on Thrumcap Shoal. The wind was gale force accompanied by thick snow, and visibility was almost nil. The vessel was keeping routine station in the boarding area, and manoeuvring to avoid ice floes when she touched the bottom before the Master realized he was so close to shore. For some time those on board were in a precarious situation but all finally succeeded in reaching shore (Ex. 1531(n)). There was no loss of life or injury but the *Camperdown* was so seriously damaged that she was written off as a total constructive loss. The payment of insurance to the Government was to cause litigation between the

temporary war pilots and the Government (*Himmelman et al. v. the King*, 1946, Ex. C.R.1). The *Camperdown* wreck was later purchased from the insurance company, salvaged, repaired and placed back in service.

On October 27, 1963, at 0240 the pilot vessel *General Page* struck the Nova Scotia Yacht Squadron jetty but no damage was reported.

(4) DESPATCHING

Contrary to the practice in Saint John, despatching in Halifax is the responsibility of the District Supervisor of Pilots both under the By-law and in actual fact. His four despatchers maintain uninterrupted 24-hour service on 8-hour shifts. Their office is equipped with land telephones and radiotelephone.

The *Nova Scotia Pilot* reminds Masters of ships bound for Halifax that it is essential to give at least three hours' notice of their requirement for pilots. Such advance notice is necessary because the pilots no longer remain in the pilot vessel in the boarding area. When Captain Slocombe made his survey in 1947 (vide p. 182), the outer pilot vessel remained constantly on station with three pilots on board and reliefs were effected by row boat from Portuguese Cove or Herring Cove near Chebucto Head. This procedure eliminated the need for E.T.A.'s and there were always sufficient pilots at the boarding station to meet the demand. However, the new procedure requires E.T.A.'s to allow time for the pilots to be called, board the pilot vessel at her harbour base and proceed to the boarding station. When there is a need for a pilot within the harbour for ships at anchor or alongside, advance notice of one hour is required.

Requests for a pilot are made directly to the despatching office either by a shipping agent using land telephone, or by a ship through the radio station at Chebucto Head, or directly to the despatching office over the ship-to-shore radiotelephone system.

The despatchers assign the pilots according to a strict tour de rôle. Assignments are given as they are received to the pilot first on turn (there is no grade system in Halifax). If a pilot wishes to miss his turn, he arranges for a replacement.

However, the roster lists only the pilots on duty, i.e., those not on official leave or unofficial leave called standby duty. Pilots on the duty list are liable to be called at any time, day or night. Normally, the pilot first on the list remains at home awaiting his assignment by telephone.

Two-pilot assignments are very rare but occasionally, e.g., when berthing a very large ship such as an aircraft carrier with her bridge on the starboard side, a second pilot is engaged to assist the pilot conning the ship. Double assignments are not provided for in the tariff but when they occur the charge is for one full pilotage and one movage.

Prior to the adoption of the *tour de rôle* system, the Halifax pilots followed an alternate weekly watch system, i.e., one week for inward assignments, and the next for harbour movages and outward assignments. They found by experience that it resulted in an unsatisfactory distribution of duties, e.g., if inward traffic was heavy on a weekend the inward watch not only attended to it but during the week that followed was responsible for all harbour movages and outward trips. The other watch had much less to do during that period and, in effect, the pilots as a whole were working at half strength.

The pilots prefer the present system based on a strict *tour de rôle* because it divides the work more evenly, and allows more of them to be available at any given time.

In November, 1962, as part of the austerity program, the Department of Transport proposed that, instead of operating the *tour de rôle* on the basis of single trips, either inward or outward, the system should be based on double assignments, i.e., one outbound and one inbound trip, thereby eliminating the shuttle service between the harbour and the boarding area. However, the pilots objected on the ground that E.T.A.'s and E.T.D.'s were unreliable. Ships sometimes arrive before their E.T.A. and departures are occasionally delayed, with the result that a pilot may not be in the boarding area when an incoming ship arrives. Pilot W. H. Crook explained that in such a case the incoming ship would suffer a substantial delay of about two hours while a pilot reached the boarding area.

The pilots urged in their brief that in order to ensure efficient despatching care should be taken that the despatching office does not serve as an information centre. Pilot Crook feared that the despatching office would become a makeshift signal service if the despatchers were allowed to give information about the position and E.T.A. of ships. At one time, the pilots themselves provided such a service but this was discontinued when the signal service telephone was placed in the despatchers' office. The pilots feared that by attending to this telephone line the despatchers would be distracted from their despatching duties.

COMMENTS

Adoption of the *tour de rôle* contributed to the decrease in the number of pilots because it made possible a more equitable distribution of assignments. As a result, shares from the pool became more representative of their participation and, at the same time, their remuneration increased as their establishment was reduced.

The system could be further improved by making greater use of radio communication with vessels, which would make planning more accurate, and by adopting a less rigid *tour de rôle* procedure, e.g., allowing despatchers to

take advantage of the presence of pilots in the boarding area or elsewhere in the harbour when they make assignments for trips and movages. In fact, such action would improve the pilots' working conditions, make better use of their time and substantially reduce demands for pilot vessel service in the harbour. This service is much too expensive and must be organized along more economical lines (vide p. 248).

The pilots' fears that incoming ships will be delayed could be overcome in a number of ways, e.g., by guaranteeing priority of service to vessels who have given a correct E.T.A. Such guarantees will be available if Pilotage Authorities are empowered to make regulations which require vessels to order pilots a fixed number of hours in advance (vide Part 1, p. 538).

Traffic Control

Traffic in Halifax Harbour is controlled by two authorities, i.e., the National Harbours Board Harbour Master for all commercial traffic, and the Queen's Harbour Master for all naval traffic.

The Harbour Master has overall control of ships' movements in the main harbour, including those involving pilotage. His duties include berthing ships at the National Harbours Board berths, allotting anchorages to ships with dangerous cargoes, granting permission to secure at mooring buoys in the harbour, keeping the harbour clear of obstructions and free of *débris* and controlling the speed of all craft within the harbour limits.

As a rule, the Harbour Master deals with the shipping agents and not the pilots.

The Queen's Harbour Master is responsible for the berthing and movements of all Canadian and foreign warships in the harbour. He controls their movements in the dockyard and in the Department of National Defence berths. As a matter of courtesy, the Harbour Master allows the Queen's Harbour Master to supervise the berthing of warships when they use National Harbours Board berths.

Canadian naval vessels do not normally employ pilots but foreign naval vessels do so when entering or leaving harbour. The berthing and unberthing of naval vessels, and occasionally Department of Transport vessels, are carried out by two special pilots called Docking Masters who are responsible to the Queen's Harbour Master and do not come in any way under the jurisdiction of the Pilotage Authority. They hold Master Mariner's certificates and are salaried and classified under the Civil Service as *Government ship officers*. They do not hold a pilot's licence. They do not pilot naval ships in

and out of harbour. If such service is required, it is performed by a licensed pilot and arrangements for his services are made by the Queen's Harbour Master through the Supervisor of Pilots.

There is no continuing liaison between the Supervisor of Pilots, the Harbour Master and the Queen's Harbour Master regarding ship movements. However, the R.C.N. does inform the pilots of the movements of vessels carrying ammunition and other dangerous cargoes or conducting underwater activities. Most information about ships' movements is readily available by calling the National Harbours Board and the Imperial Oil Wharf. The pilots felt that it would be in the interest of safety if one authority or office were responsible for plotting all ships' movements in the harbour. Thus, the exact situation could be ascertained at any given moment.

(5) WORKLOAD

When the Commission sat in Halifax the pilots said little about their workload because it then presented no problem. They were not overworked and despite their extensive unofficial leave there was no record of a pilot being recalled or of a ship being delayed for lack of a pilot. Furthermore, it would appear from the drastic reduction in the pilots' establishment since then that, in fact, their number had become too large for the current workload.

The demand for pilotage services is now rather evenly distributed with no marked recurrent peak periods. The slight winter increase in pilotage traffic has tended to disappear in recent years. Appendix B is a graph showing the variations in the number of trips on a per month basis for 1960, 1961 and 1962 compared with a similar analysis for 1967. In the three years from 1960-1962, the traffic in the four winter months of January, February, March and December then accounted for 39.5, 37.4 and 37.7% of the total traffic of the year. This was not substantially above the mathematical average of 33.3%. In 1967, the seasonal increase completely disappeared and those four months accounted for 32.7% of the demand.

Furthermore, since Halifax is not greatly affected by tides, pilotage assignments can be handled day or night. Thus a pilot may perform a number of assignments within a twenty-four hour period and, unless an adequate number of pilots are available for duty to meet the demand and work is distributed reasonably, some pilots may be overworked. However, it is reported that, even with only 12 pilots on strength and despite the prevailing system of unofficial leave (*vide p. 205*), no vessel has ever been delayed for lack of a pilot and at no time has it been found necessary to call upon any of the four pilots on unofficial leave.

With reservations regarding the use of statistics, the following table indicates for the period 1961-1967 the total number of assignments including movages actually performed by pilots, and the average number of assignments per establishment pilot (for comparison with other statistical data, vide graph and table in Appendix A):

Year	Total number of assignments*	Number of pilots on establishment	Average number of assignments per year per establishment pilot
1961.....	3715	19.3	192.5
1962.....	4010	18.4	217.9
1963.....	3568	17.5	203.9
1964.....	3819	17.0	224.7
1965.....	3648	16.6	219.8
1966.....	3768	14.8	254.6
1967.....	3546	12.4	286.0

SOURCES OF INFORMATION: Ex. 344 and Ex. 1308 (DOT letter Aug. 8, 1968).

* The number of assignments were arrived at by subtracting the number of trips and movages without pilots (Ex. 1308—DOT letter Aug. 8/68) from the total number of trips and movages subject to payment of dues appearing on appendices to annual reports (Ex. 344).

The following table shows that assignments are quite evenly divided among the active pilots (the difference between the averages is readily accounted for by official and unofficial leave which means that at any time never more than $\frac{2}{3}$ of the pilots are on roster):

ASSIGNMENTS

Year	Busiest month	Total	Busiest pilot	Average per establishment pilot	Least busy month	Total	Busiest pilot	Average per establishment pilot
1961	March	420	24	21.8	June	231	14	12.0
1962	March	469	36	25.5	Sept.	246	38	13.4
1963	March	427	36	24.4	Sept.	207	21	11.8
1964	March	452	31	26.6	Aug.	228	24	13.4
1965	March	472	35	28.4	Nov.	232	19	14.0
1966	March	411	32	27.8	Nov.	260	23	17.6
1967	January	302	28	24.4	Aug.	208	28	16.8

SOURCES OF INFORMATION: Exs. 1306 & 1531(r).

A mathematical division of the 3,546 total assignments for the year 1967 gives the following averages, first per establishment pilot and secondly per pilot on roster.

Assignments	Per establishment pilot	Per pilot on tour de rôle
Per year.....	286.0	286.0
Per month.....	23.8	35.8
Per week.....	5.5	8.2
Per day.....	0.78	1.2

These mathematical averages can not give an accurate picture of the situation for any given day, week or month in view of the variation in the traffic but, since the traffic is now quite evenly spread throughout the year, the foregoing figures may be taken as representative.

The duration of a tour of duty is on the average about three hours from the time a pilot leaves his residence and returns after completing an assignment. It takes the pilot vessel 60 to 80 minutes to travel the distance between the boarding station and its Halifax base. Inward and outward trips take about 1 hour but large tankers and ships destined to the Gypsum pier require an hour and a half to two hours. Movages in the harbour vary depending upon the destination but the average movage takes three hours. Occasionally, an assignment lasts longer due to bad weather.

Waiting time at the boarding area has been considerably reduced with the policy of transporting the pilots only when ships are about to arrive, a fact which can easily be ascertained in advance by radio.

Analysis of the active duty time of pilot J. H. Maxner, the busiest pilot in March, 1964, which was the busiest month that year (Ex. 353), indicates that he performed 20 trips and 12 movages (including two performed at the conclusion of a trip and counting with the trip as one assignment), had one cancellation and was detained twice. During that month he spent 51.8 hours piloting, an average of 1.62 hours per assignment. Detentions and cancellation account for 4.8 hours, making a grand total of 56.6 hours. The three longest assignments were 6.2 hours when a trip was followed by a movage, 6.3 hours where there was a combination of trip, movage and detention, and 3.3 hours when he was detained for one hour during a trip. These figures do not take travelling time into account.

Most of his assignments were during daylight:

- (a) two between midnight and 6.00 a.m.,
- (b) fourteen between 6.00 a.m. and noon,
- (c) ten between noon and 6.00 p.m., and
- (d) five between 6.00 p.m. and midnight.

In 1964, the least busy month was August and the busiest pilot was pilot E. K. Hartling (Ex. 350). He had 24 "jobs" which accounted for 20 trips, 5 movages (including two performed at the conclusion of a trip) and one cancellation. Time piloting totalled 44.4 hours making an average of 1.78 hours per assignment. Detention time amounted to 1 hour. The distribution of work throughout the twenty-four hours was as follows:

- (a) two assignments from midnight to 6.00 a.m.,
- (b) six between 6.00 a.m. to noon,
- (c) seven from noon to 6.00 p.m., and
- (d) nine from 6.00 p.m. to midnight.

COMMENTS

The positive action taken by the Pilotage Authority with regard to the pilots' strength has warded off serious problems that would doubtless have arisen otherwise. Its study of the pilots' workload indicated that they were over strength and, in contrast to developments in other Districts, the Pilotage Authority was able to increase pilotage income steadily without raising the rates by gradually reducing the number of pilots while maintaining an efficient service with a reasonable workload and adequate time off duty.

Pilotage operations in Halifax are heavily subsidized, the main item being the pilot vessel service. As stated earlier, it is considered that this service should be reorganized to reduce costs even if this means some increase in the pilots' workload. If the harbour vessel service were discontinued, it would take longer for the pilots to travel by land, especially during peak traffic periods. Before changes of this nature are made, accurate and detailed statistics must be kept in order to ascertain the effect on the pilots' workload and availability. The aim sought may be defeated if on account of the resultant increase in the pilots' time on duty a larger number of pilots become necessary.

6. PILOTS' REMUNERATION AND TARIFF

(1) PILOTS' REMUNERATION

(a) *Pooling procedure*

The Halifax pilots receive for their services a share of the net pilotage earnings of the District because the By-law compels them to pool their earnings. The By-law also stipulates how shares are computed but this section of the regulations is not observed and pooling is effected according to rules the pilots themselves devised over the years. Thus their pooling system is unique.

The By-law section concerning pooling is the same as in all other Minister's Districts where pooling is administered by the Authority. The procedure is the simplest possible, i.e., sharing the net revenue monthly. The system is based on the assumption that dues are paid immediately after services are rendered and that foreign-going ships can not obtain clearance from Customs without proof of payment (subsec. 344(1) C.S.A.). At the end of each month the Supervisor divides among the pilots, according to their availability for duty, whatever remains after the authorized expenditures have been deducted from the pilotage dues collected during the month. Once the shares have been established they must be paid to each pilot, thereby bringing to nil at the end of each month that part of the Pilotage Fund composed of pilotage dues, i.e., the pool. Since the dues are paid as they are earned, there is no necessity for financing and sharing is equitable.

However, since the principle of immediate payment is departed from, the By-law pooling procedure can not be applied without causing serious problems of equity unless the number of pilots is small and pilotage assignments (hence pilotage revenue) are evenly spread throughout the year (vide *New Westminster Pilotage Fund*, Part II, p. 361 and *Saint John, N.B., Pilotage Fund*, Part III, p. 128).

Basically, pilotage dues belong to the pilots who furnished the services, whether they are paid immediately or not. When a pilot is obliged to pool his earnings with other pilots, sharing should apply only to those who contributed to the pool during the period the dues were earned. It is for this reason that in most Districts the pilots have based their pooling procedure on *dues as earned* but, since there is a delay before they are collected, payment of shares can not be effected immediately unless money is advanced from other sources. In the B.C. District, the problem was resolved by the creation of a Reserve Fund (vide Part II, p. 185); in Halifax, the pilots have adopted another method of providing their own financing, i.e., delaying payment until collections are made.

However, this process is complicated by requirements that no longer exist, and by arbitrary practices that have developed. The rules governing pooling as practiced in Halifax can be summed up as follows:

- (i) The amount of the shares is determined monthly on the basis of net earnings during that month.
- (ii) A distinction is made between *salary* and *share* for sharing and payment purposes. *Salary* is the amount paid on the 15th and the 30th of each month (no doubt it originated merely as an advance payment of a pilot's share of the pool) while *share* (net monthly share) is that portion of each pilot's monthly gross share that remains payable. These net shares are credited to each pilot for

each of the 12 months of the fiscal year and the accumulated amount is paid to him during the next fiscal year when sufficient funds are available.

- (iii) The monthly salary is fixed arbitrarily (in theory by the Supervisor but in practice by the pilots themselves) in advance at the beginning of each month on the basis of the total dues expected during that month, but with a portion retained to accumulate the "reserve" originally required to meet current District operating expenses (a situation that no longer exists).
- (iv) Entitlement to "salary" is entitlement to receive "pay" as provided for in the By-law, i.e., time available for duty, or on regular annual leave, or on sick leave with full pay call for full salary; sick leave on half pay calls for half salary during the applicable period of time not on strength; when a pilot's licence is suspended or he is absent without pay, he has no entitlement.
- (v) "Salary" is treated as a District operating expense and the remaining aggregate net amount of earned pilotage revenue is used to establish "shares".
- (vi) According to an arbitrary rule (contrary to the By-law) for the establishment of shares, sick leave does not count for entitlement.
- (vii) According to another unwritten and arbitrary rule, it has been the custom for the pilots to grant a "gratuity" to retiring pilots or to the estate of deceased pilots. The amount of the gratuity is decided in each case by the remaining pilots as a group. Generally they have authorized the continuation of "salary", but not "share", for the succeeding two and a half months.

The amount of the "salary" varies considerably from month to month. It was fixed as follows in 1965: January and February \$1,100; March \$1,300; April, May and June \$500; July and August \$600; September and October \$800; November \$900; December \$1,000 (Ex. 1531(j)).

The amount of the "share" can be made arbitrarily very high by fixing a small "salary" to the prejudice of those on sick leave with pay, e.g., in April, May and June 1965 the gross share was respectively \$1,071.21, \$1,064.69 and \$1,021.36. This left a substantial net "share" of \$571.21, \$564.69 and \$521.36, which the pilots on sick leave were not entitled to receive, while in February the gross share amounted to \$1,098.35 and, since the "salary" had been set at \$1,100, thereby indirectly granted full sharing rights to the pilots on sick leave with pay.

Since "salary" is the basis of "gratuity", the amount of the latter may vary widely depending upon the amount of the current "salary". A retirement May 1, 1968, would have resulted in a gratuity of \$1,250, but on December 31, 1964, \$2,850, unless the pilots as a group deviated from their established practice.

COMMENTS

It is considered that the complicated pooling procedure with its arbitrary rules should be discontinued and replaced by a pooling system fully covered in the regulations (Part I, pp. 192 and ff.).

There is no reason for using the fiscal year rather than the calendar year. The Department of Transport requested in 1960 that the annual financial statements of the Pilotage Authorities be based on the calendar year, but apparently the Halifax pilots objected to changing a procedure to which they were accustomed and the Pilotage Authority complied with their wishes and continued administering pooling on the former basis. However, since 1960, the District's annual financial reports have been submitted for the sake of uniformity on the basis of the calendar year, thus distorting the accounting procedure (vide General Recommendation No. 39, Part I, pp. 583 and 584).

There is also no reason why the net revenue that has accumulated during a month should not be fully distributed to the pilots at the end of the month, bringing the pool to nil each time. Since there are no longer any operating expenses to be paid out of pilotage earnings (vide p. 237), there is no need to deprive the pilots for any length of time of any money that belongs to them and there is no valid reason for keeping a reserve.

The arbitrary and discriminatory distinction between "salary" and "share" should be abolished. The rights of a pilot to a share of the pool should never depend upon arbitrary administrative decisions. If it is deemed advisable to provide out of the pool severance pay or coverage against loss of earnings due to illness or injury, the legislation governing the operation of the pool must include entitlement to such benefits as an acquired right (vide Part I, General Recommendation No. 39, pp. 583 and 584).

If the pilots are to retain their status as *de facto* employees and their system of financing the pool out of their own resources, it is considered that their shares should be determined at the end of each month on the basis of the net pilotage earnings (as earned) of the month (less pilot boat charges). All money on hand in the pool should be distributed to the pilots prorated on the outstanding balance owed to each. The outstanding balance owed to a retiring pilot or to the estate of a deceased pilot should take precedence. It is considered, however, that the system in force in British Columbia should be adopted because of its simplicity and adequacy.

(b) *Remuneration*

The following table shows the average remuneration, according to the various meanings given to the term "per pilot on establishment", for the years 1959/60 to 1967.

SHARE PER PILOT ON ESTABLISHMENT

Year	Pilots on Estab- lish- ment*	"Take Home Pay"***	District Pilotage Earnings on Earned Basis**	Total District Pilotage Cost***
1959/60.....	20.98	\$10,135.91	\$10,744.40	—
1960.....	20	10,052.44	10,167.10	—
1961.....	19.3	10,263.81	10,917.98	\$18,109.69
1962.....	18.4	10,702.11	11,421.52	19,175.87
1963.....	17.5	10,829.77	11,566.14	20,494.11
1964.....	17.0	12,258.89	13,051.00	23,103.94
1965.....	16.6	12,791.00	13,598.72	24,381.27
1966.....	14.8	14,745.33	15,234.54	—
1967.....	12.4	16,414.44	16,495.98	—

SOURCES OF INFORMATION:

* Appendix A(2), p. 251.

** Ex. 344 (Annual Reports).

*** PART I, *Appendix IX*, pp. 639-641. (The Consultant's study on which these figures are based covers only the five-year period 1961-1965.)

The average "take home pay" shown in this table is somewhat less than the amount of "take home pay" attributed in the financial statement to the permanent pilot constantly available for duty. Furthermore, on account of the distinction between "salary" and "share" and the different rules governing their computation, a proportionately smaller number of pilots receive an equal share than would be the case in most other Districts. For instance, the alleged distribution shown in the 1967 financial statement is:

9 pilots received \$16,348.95¹

1 pilot received 16,327.89

1 pilot received 16,327.23

1 pilot received 16,288.05

1 pilot received 5,955.18 (gratuity included)

1 pilot received 1,500.00 (gratuity only)

Pilot L. C. Whorrall had retired December 15, 1966. Because of the practice of granting gratuities he was paid \$1,500 in 1967 although he was no longer on strength. In his case the gratuity granted was only for one

¹ Two pilots received a few cents more than the seven others no doubt due to indivisible amounts.

month and a half since the "salary" for January and February was \$1,500 in each month, which would have normally entitled him to receive \$3,000 in 1967 instead. Pilot W. L. Power resigned May 21, 1967, due to ill health. The slight differences in the cases of the three other pilots are accounted for by the difference in the method of computing "salary" and the "shares", these three pilots having been absent during the year on sick leave with full pay.

Apart from the question of the average figure, the amounts shown as "take home pay" do not correspond to reality but represent a complicated bookkeeping situation due to the requirement to furnish a financial statement, based on the calendar year, of the pooling of earnings during the fiscal year. For instance, the amount quoted as the 1967 "take home pay" of the pilots who had full sharing rights is computed as follows (Ex. 1531(j)):

Payments actually made during the calendar year, i.e., the salaries paid during the 12 months of the calendar year and the amounts paid after March 31 to cover the "share" for the 1966 fiscal year.....	\$16,243.14
Less the accrued unpaid partial "share" of the 1966 fiscal year pooling as of January 1, 1967.....	2,871.53
	<hr/> \$13,371.61
Plus the accrued unpaid partial "share" of the 1967 fiscal year pooling as of December 31, 1967.....	2,977.34
Total amount shown as "take home pay".....	<hr/> \$16,348.95 <hr/>

The actual "take home pay" for the calendar year was \$16,243.14, i.e., what was actually paid to the pilots, and thus their income for income tax purposes. The accrued unpaid partial share at the end of the calendar year is not a receivable account but merely a share in the reserve fund as it then stands. From it will be paid the pilots' group expenses incurred up to the end of the fiscal year and the monthly shares of January, February and March will accrue before final payment. In fact, on March 31, 1967, the final accrued share had decreased to \$2,743.19.

In Halifax, the pilots are not reimbursed for their expenses incurred in the performance of their duties, although the By-law provides for their right to travelling expenses. Such expenses must be small because most of their travelling, even within the harbour, is in the pilot vessels.

COMMENTS

Although the amounts shown in the financial statements for a given period are not actually correct, the total over a period of years corresponds exactly to what each pilot has in fact received. Any discrepancy that may exist between the unpaid amount of the share at the end of the calendar year

and what is actually paid is accounted for by the amount shown as paid during the next calendar year. Therefore, for the purpose of assessing the pilots' level of remuneration these figures may be accepted.

From 1959/60 to 1967 the pilot's average "take home pay" has increased by 61.9 per cent, despite a slight decrease in the number of vessels (—1.5%) and aggregate tonnage of vessels (—2.6%) subject to the payment of dues. While there was a slight increase in the rates in 1960, the main reasons for such a substantial increase were the reduction in the pilots' strength (p. 202) and the discontinuation as of July 1, 1966, of the 5 per cent contribution to the defunct Pension Fund (p. 242).

(2) TARIFF

The tariff structure in Halifax has remained unchanged since voyage rates were first established in 1830 by the first Nova Scotia pilotage statute, and the other items gradually added thereafter have retained the form in which they first appeared.

This table shows the various items of tariff on an earned basis for the years 1962 and 1967 and the relative importance of each is shown as a percentage of the total earnings derived from the tariff (not counting pilot boat charges). For a complete comparative financial statement for the years 1965-1966-1967, see p. 238.

Pilotage dues	1962		1967	
	\$	%	\$	%
(A) Voyages				
Basic rates.....	193,203.34	91.9	187,170.58	91.5
Half rate to examination anchorages..	*	—	*	—
Rate and a half—dead ships.....	*	—	*	—
Half rate for non-exempt Canadian coastal vessels not taking a pilot.....	*	—	*	—
	193,203.34	91.9	187,170.58	91.5
(B) Other services				
Movage.....	15,913.88	7.6	16,350.51	8.0
D. F. calibration.....	214.50	0.1	286.00*	0.1
Compass adjustment.....	286.00	0.1		
Engine trial.....	378.95	0.2	135.85	0.1
Standby duty.....	*	—	*	—
	16,793.33	8.0	16,772.36	8.2

Pilotage dues	1962		1967	
(C) <i>Indemnity charges</i>	\$	%	\$	%
Detention.....	264.00	0.1	288.20	0.1
Cancellation.....	165.00	0.1	319.00	0.2
Overcarriage (sec. 359 C.S.A.).....	Nil	—	Nil	—
Quarantine (sec. 360 C.S.A.).....	Nil	—	Nil	—
	429.00	0.2	607.20	0.3
	210,425.67	100.1		
Less refunds and adjustments.....	269.75	—0.1	Nil	
TOTAL DUES BELONGING TO PILOTS.....	210,155.92	100.0	204,550.14	100.0
Accessory services				
Pilot boats.....	30,280.00	—	28,310.00	—
Radiotelephone fees.....	Nil	—	Nil	—
GRAND TOTAL.....	240,435.92	—	232,860.14	—

SOURCE OF INFORMATION: EX. 344 (Annual Reports).

* These items are not shown separately in the breakdown of pilotage revenues in the financial statements.

(3) PILOTAGE DUES

(A) *Voyage Charges*

Voyage charges are the main source of income of the District, accounting for almost 92 per cent of earnings.

The rates no longer differentiate between inward and outward voyages. Since the distance is relatively constant (as is generally the case in port pilotage), draught presents no problem and there are no special features to cause added difficulty, a uniform rate based on tonnage has been made applicable to all voyages (or trips as they are also called).

The voyage rate is based on net tonnage and is expressed in the form of a variable scale for each 100 tons beginning with a minimum charge set at 200 tons. The scale is arranged so that on a per ton basis the resultant rate decreases as tonnage increases. While for the first and second 100 tons the charge is \$7.23 for each 100 tons, the rate gradually decreases to \$5.41 for the sixth hundred tons, 90¢ for each additional 100 tons up to 6,000 tons and 80¢ each thereafter.

This method of calculating rates is a relic of free enterprise when the rates were designed to compensate for the difficulty of each assignment, but it is an anachronism in fully controlled pilotage whose main criterion for rate-

fixing is to share the total cost of the service equitably among the users. It is considered that the fairest way to achieve this objective is to base voyage charges on an invariable unit price per ton with a minimum charge (for minimum charge, vide Part II, p. 351). With the trend to fewer but larger ships, the existing scale results in diminishing aggregate revenues while the aggregate tonnage piloted remains fairly constant.

Both the Supervisor and the pilots considered tariff based on NRT was becoming increasingly unfair for another reason: the weaknesses of net tonnage measurements. The Supervisor and pilot William Crook each recommended a new system for assessing ships based on ships' dimensions. The whole problem, including their suggestions, is studied at length in Part I pp. 165 to 181. The Commission's conclusion was that, unless there were some special local factors to be considered, the most equitable method of apportioning the cost of the service was by using solely a price unit per ton of maximum gross tonnage. The general rule should apply in Halifax because there is no special local factor.

The amount of voyage rates has been increased and decreased many times during the last 100 years but the net increase has been small as is shown by this table which shows the scale in 1874 and 1967:

For vessels of N.R.T. between	1874		1967
	Inward	Outward	Inward and Outward
	\$		\$
0-200.....	10.00	6.00	14.45
200-300.....	13.00	8.00	19.80
300-400.....	16.00	11.00	25.25
400-500.....	18.00	12.00	28.85
500-600.....	20.00	13.00	32.45
600-6000 (per additional 100 tons).....	1.00	0.80	0.90
6000 plus (per additional 100 tons).....	1.00	0.80	0.80

The last significant increase in trip rates occurred in 1960 when the charge per 100 tons between 1,000 and 6,000 was raised from 82¢ to 90¢ and over 6,000 from 72¢ to 79¢.

According to the tariff, voyage rates are separated into basic rates, half rates for vessels calling only at the examination anchorage, one and a half rates for dead ships. In addition, coastal and inland Canadian traders of over 1,000 NRT are required to pay half regular rates if they do not employ a pilot.

It is not possible from the information available to segregate the actual yield of each of these items because they are not accounted for separately in the annual financial statements. In reply to the Commission's inquiry the Pilotage Authority wrote on September 12, 1968 (Ex. 1531(u)):

- (a) No use has been made of the examination anchorage over a period extending for at least ten years.
- (b) There are approximately ten instances monthly of dead ship movements, usually in connection with vessels proceeding to or from the local shipyard. For financial statement purposes the resulting collections are included in the total of voyage or movage income as the case may be.

The data regarding the number of non exempt ships that used pilots or dispensed with their services and the revenues collected in such cases are not segregated on the financial statement. The information in the table on p. 196 was obtained from the Department of Transport. These data, however, do not differentiate between ships that paid full rates and half rates.

It was not considered necessary for the purpose of this Report to obtain the amount of revenue collected on each of these items because the information available conveyed a sufficiently accurate idea of the importance of each. It is recommended that future financial statements should contain complete details in order to provide precise statistics.

(B) Other Services

(a) Movages

Movages account for the greater part of the balance of District revenues, i.e., about 8 per cent. The pilots have expressed their dissatisfaction with the rates for movages which they consider too low, pointing out that there is as much work involved in a movage as piloting a ship in or out of harbour.

The last increase in movage charges occurred in 1960 when they were revised upward by 10 per cent.

The rate structure takes the form of four charges. The tariff differentiates between movages performed wholly inside the main harbour and others, and in each case two flat charges are provided, the smaller for ships under 3,000 tons and the larger for those in excess. This structure was already in effect when the Minister published his By-law in 1920. Originally, however, the By-law did not provide for movages (vide 1875 By-laws, Ex. 1531(d)).

The movage of a dead ship calls for one and a half rates. The incidence of this last item can not be ascertained since it is not segregated. For movages fees paid on account of the compulsory payment of dues reference is made to the table on p. 196.

While movages account for about 8 per cent of the dues, they amount to about 20 per cent of the total number of trips and movages for which dues are paid (18.9% in 1962 and 21.7% in 1967).

The relative value of the various types of movages compared to pilotage voyages should be a matter for the Pilotage Authority to determine. This Commission does not possess the necessary data to give an opinion and, therefore, its comments on the subject must be of a general character only.

The complaints of the Halifax pilots arise from the fact that in port type Pilotage Districts there is little difference at times between a voyage and a movage. The main service rendered in a pilotage voyage is navigating a ship into the confined waters of a District; berthing or unberthing does not occur in all cases and, when it does, it is considered merely an accessory to the trip and is not taken into account. The pilotage service rendered in a movage consists mainly of berthing or unberthing and the navigation entailed is generally of short duration and in sheltered waters, often with the assistance of tugs. Hence, it is disregarded. The required *expertise* in either case varies in nature and importance. Even in Halifax the responsibilities involved and the possible consequences differ greatly and trips should call for a higher charge than movages. One possible solution would be to restrict voyage charges only to navigation inward or outward, abolish movage charges as such and establish a berthing charge. Inward or outward voyages would then call for a voyage charge plus extra charges for berthing and unberthing. But, if a ship anchored, only the trip charge would be made. A movage would call for one or two berthing charges, depending on whether an unberthing and berthing was involved, or only one of them. The small amount of navigation involved should not as a rule call for any extra charge. A special charge should be devised for the occasions when a ship may be moved from one anchorage to another.

Here again, it is considered that the charge should vary with the size of the ship and the same method should apply as for the voyage rate, i.e., a price unit per ton of maximum gross tonnage with an adequate minimum.

(b) *D.F. calibration, compass adjusting and trial trips*

These three items amount to very little in the aggregate District earnings (0.4% in 1962 and 0.2% in 1967).

The By-law does not provide specifically for D.F. calibration. In practice, the charge for compass adjusting is applied. It is considered that the tariff should be amended to cover both items.

The wording in the tariff (sec. 5) corresponds to sec. 5 of the Saint John tariff with the difference that when the service is performed within the Halifax District the specific dues are payable "in addition to movage charges", a stipulation that is obviously missing in the Saint John tariff. When such services are performed outside the District, the remark on pp. 125-127 concerning the Saint John tariff also applies.

(c) *Standby duty*

The Halifax tariff (subsec. 7(2)) is the only one which provides remuneration for "standby duty" (also called "security watch", Part I, p. 136). However, it is entered under "detention" although it is of a totally different nature. Detention means that a pilot's availability is retained but he performs no service, whereas a pilot on security watch is on active duty, has to be on the alert for any emergency and is responsible for the safety of the ship concerned. Such duty occurs occasionally during severe weather when a ship is at anchor or berthed.

There is a realistic difference between the two services in the tariff: the hourly charge is the same (\$2.20) but on safety watch remuneration begins with the first hour and the daily maximum is greater.

This item is also not shown in the financial statement. The Pilotage Authority reported that it is applied only on very rare occasions, not more than once a year. Collections arising from security watch are included in the total of detentions (Ex. 1531(u)).

(c) *Indemnity Charges*

The tariff provisions governing quarantine, overcarriage, detention and cancellation are the same as for Saint John and the comments in Section Two apply *mutatis mutandis* (vide p. 127).

(d) *Accessory Services*

In the field of accessory services the tariff provides a separate rate for pilot vessel service only. Since such a charge was first introduced in 1959 (P.C. 1959-1601 dated Dec. 18, 1959), it has been \$10 each time a pilot vessel is used. As is always the case when this service is provided by the Department of Transport, the By-law provides that dues collected from that source do not form part of the pool but are to be paid to the Receiver General of Canada (subsec. 9(2)(c)).

Although radiotelephone sets are furnished by the Department of Transport free of charge to the pilots (except the obligation to meet the cost of replacement in case of loss, vide p. 204), a radiotelephone charge has not been introduced in the tariff as is the case in the other Districts where these sets are supplied (e.g., B.C. Tariff, sec. 14, as of Jan. 12, 1966). The Department of Transport has informed the Commission that there was no special reason why a charge was not made in Halifax (D.O.T. letter of Sept. 10, 1968, Ex. 1531(s)) but "when the opportunity arises the introduction of a charge for the use of radiotelephones will be considered".

7. FINANCIAL ADMINISTRATION

There are three funds in the Halifax District: the Pilotage Fund and the Pension Fund, which are kept by the Pilotage Authority, and the pilots' "Group Fund", that is kept by the Pilots' Committee.

The Pension Fund will be studied at the end of this chapter. The pilots' "Group Fund" corresponds to the *Club Fund* the B.C. pilots used to have (vide Part II, p. 187). It is a private fund kept and administered by the pilots themselves to meet incidental non recurring group expenses such as floral tributes, gifts and Christmas cards. It is supported by equal personal contributions from the pilots (p. 242) and the bookkeeping is done by the District Accountant as a personal service. Withdrawals are made by cheques signed by two members of the Pilots' Committee.

When the Minister of Marine and Fisheries became the Pilotage Authority in 1918, the financial administration of the District was centered in Ottawa (as for all Districts which came under the Minister's jurisdiction). Dues were collected by the local Customs officers and paid to the Department; all payments out of the Pilotage Fund, including the pilots' shares in the pool, were made by cheques issued from Ottawa. It is only since 1948 that the financial administration has been decentralized and the Pilotage Fund has become the responsibility of the local Supervisor.

The Supervisor stated that he never had difficulty collecting pilotage dues for services rendered except once when he was forced to have a ship's clearance held at Dalhousie under subsec. 344(2) C.S.A. The bill was paid within a few days.

The interpretation of the compulsory payment provision of the By-law has also caused him some difficulties, e.g., three coastal traders belonging to the Irving interests, one over 1,000 net tons Canadian registry and two below 1,000 net tons but over 250 net tons, both registered in Nassau. On account of the ambiguity of subsec. 6(3) of the By-law, the Department of Justice ruled that the Pilotage Authority had not established that these ships were not exempt (Ex. 1495(a)). The By-law provision was amended in November, 1963, to overcome this defect (vide p. 167).

The only financial document prepared annually by the Pilotage Authority is no longer a financial statement in the accepted sense but has become merely a document containing limited statistical information of a financial nature covering the calendar year. The information is limited to that part of the Pilotage Fund which comprises pilotage earnings and the disbursements made from them. It is divided into two completely separate parts. The first contains statistical information regarding the items that enter into the operation of the pool, and the second is a partial financial statement of receipts and earnings concerning pilot boat charges. Since the second part of the document is self-explanatory, only the first part will be discussed.

For easier comprehension, the annual statements for the years 1965, 1966 and 1967 are presented in combined form. The schedules attached to the annual statements are not reproduced because the information contained in them has already been studied. Schedule A details the pilotage dues earned (not collected) during the year (vide pp. 231-232) and Schedule B shows the amounts paid during each calendar year (salary paid during the calendar year and share paid during the same calendar year but earned in the fiscal year which ended March 31 of that year) to each pilot during the calendar year, plus the extent of their aggregate "share" in the reserve (based on the fiscal year) as of December 31 (vide p. 230).

INCOME STATEMENT
January 1-December 31

	1965	1966	1967
<i>Earnings</i>			
Pilotage.....	\$225,731.06	\$225,471.16	\$204,550.14
Adjustments.....	7.75	nil	nil
	\$225,738.81	\$225,471.16	\$204,550.14
<i>Disposition of Income</i>			
Pilots' shares.....	\$166,833.16	\$178,928.00	\$167,914.64
Pilots' Pension Fund.....	11,211.56	6,141.89	nil
Expenses:			
Administration, etc.....	373.00	358.00	226.00
Pilots' indemnity policy.....	881.33	740.46	650.07
Radiotelephone insurance.....	nil	nil	135.00
	\$179,299.05	\$186,168.35	\$168,925.71
<i>Reserve and Surplus</i>			
Cash in bank.....	\$27,591.99	\$20,457.15	\$18,460.48
Accounts receivable.....	18,847.77	18,845.66	17,163.95
	\$46,439.76	\$39,302.81	\$35,624.43
	\$225,738.81	\$225,471.16	\$204,550.14

FINANCIAL STATEMENT-PILOT BOAT SERVICE
January 1-December 31

	1965	1966	1967
Outstanding as at January 1.....	\$ 2,390.00	\$ 2,440.00	\$ 2,740.00
Earned: January 1-December 31.....	29,990.00	30,860.00	27,770.00
	32,380.00	33,300.00	30,510.00
Collected: January 1-December 31.....	29,940.00	30,560.00	28,310.00
Balance outstanding as at December 31.....	\$ 2,440.00	\$ 2,740.00	\$ 2,200.00

SOURCE OF INFORMATION: Exhibit 344.

Up to the fiscal year 1959/60 this income statement was a true final account to the pilots of the operation of the pool for the fiscal year just ended. During those years this "income statement":

- (a) showed the aggregate earnings (on earned basis) during the fiscal year which made up the pool for that year (shown as *Earnings*);
- (b) summarized the expenditures actually paid out of the pool during the fiscal year, which then comprised the District operating expenses, the pilots' group expenses and the compulsory contribution paid to the Pension Fund;
- (c) established the pilots' final rights in the pool by summarizing the 12 monthly sharings and showing the aggregate amount of the "salaries" paid during the fiscal year to the pilots as well as the aggregate amount of the pilots' monthly "shares". The aggregate amount of these "shares" together with the 5 per cent payable to the Pension Fund when the "shares" are paid comprises the item *Reserve and Surplus* which is, therefore, the aggregate of the amounts that have been credited monthly to the account of each pilot and to the Pension Fund but not paid for the purpose of financing pooling.

Because the "income statement" was not an annual financial statement (not even of the pool), it did not provide continuity from one year to the next and did not reflect all the financial transactions that occurred, but only what was needed to establish each pilot's entitlement. This explains why, contrary to the procedure followed in the *Statement of Boat Service*, the *Surplus and Reserve* is not shown at the beginning of the next year's statement.

This "income statement" lost its intended purpose and meaning when the pilots declined in 1960 to comply with the Department of Transport's request that henceforth accounting should be effected on the basis of the calendar year, and when, despite the factual situation, the Pilotage Authority began to produce an income statement based on the calendar year. Such a statement is no longer a final account of pooling and does not establish the rights of the pilots in the pool, but merely contains statistical information of a financial nature taken from two different pools, the figures of one not being final since it is not yet concluded (vide p. 229).

With the foregoing reservation, the various items shown on the "income statement" are reviewed as follows:

(1) ASSETS AND ITEMS OF REVENUE

Because of the nature of the financial statement, only those items that form part of the pool are entered as assets and revenues, i.e., pilotage dues and the statutory indemnities for overcarriage and quarantine which form

part of the pool according to the By-law. These items were studied earlier (pp. 231-239). The other small items of revenue that enter into the Pilotage Fund are not shown.

The item *Refunds and Adjustments* is used to correct errors made computing dues and billing. These may be debits or credits depending upon the type of error, e.g., when checking source forms, errors such as wrong tonnage are found, or full dues may have been charged under the compulsory system to a ship enjoying a partial exemption. When such an error is found, a new bill is sent and the correction in the Pilotage Authority's books is made through this item so that the final amount under "Earnings" shows the exact amount of the pool for that year.

(2) LIABILITIES AND ITEMS OF EXPENDITURE

Here again, since the Halifax financial statement shows only earnings belonging to the pool, the expenditures from the Pilotage Fund show only those that affect pooling. Hence, this part of the *Income Statement* originally indicated how the pool monies had been and were to be paid to, or on behalf of, the pilots. Expenditures may be grouped as follows:

- (a) Group expenses.
- (b) Pension Fund deductions.
- (c) Distribution to pilots.

(a) *Group Expenses*

(i) *Pilots' group indemnity insurance*

The pilots as a group possess an insurance coverage entitled *Pilots' Loss of Income Indemnity and Legal Defence Policy*. In 1963, for a premium of \$55.80 per pilot they were guaranteed for a maximum period of six months a monthly income of \$500 in case of unemployment during suspension or the cancellation of their licence (Ex. 357).

The pilots do not participate in the benefits of the provincial Workmen's Compensation legislation, nor are they covered by any group insurance because they felt that sec. 24 of the By-law covering sick leave in case of injuries sustained while on duty provides very satisfactory coverage which each pilot could complete personally by taking out a policy covering disability. Pilot W. H. Crook stated that most of the pilots carried personal accident insurance but were required to pay a risk premium on account of their occupation.

The pilots have also covered by insurance their responsibility for the replacement, in case of loss, of the radiotelephone sets they have on loan. The Department of Transport has informed the Commission (Ex. 1531(w)) that "the decision to take care of the cost of replacement" was taken voluntarily by the pilots themselves.

(ii) *Administration, postage, etc.*

Under this item are entered small items of District operating expenses and miscellaneous expenses of the pilots as a group. For accounting purposes it would have been preferable to segregate them in detail. The payment of District operating expenses is a relic of the past when the District operating expenses had to be paid as provided for in sec. 328 C.S.A., i.e., from licence fees and pilotage dues. Some small items of Halifax District operating expenses are still paid out of the dues, despite the fact that the required authorization of the Governor in Council was not obtained and that these disbursements are not even purported to be authorized by subsec. 9(2) of the By-law which lists the only deductions that may be made out of pilotage earnings. These small items of the District operating expenses are for stamps, rental of the post office box, telegrams and similar expenditures. The stamps used for official correspondence concerning the Department of Transport are paid out of the pool but are reimbursed by the Government every month. Those used to send out bills to agents remain a charge on the pilots' earnings. By way of explanation, it was stated that bills are not Government business but pilotage business. On the other hand, the Department of Transport furnishes the stationery including the source forms and the bill forms free of charge. This is an anachronism which should be corrected. It is furthermore a discriminatory practice in that in other Districts, such as Saint John, N.B. where the Department of Transport has assumed District operating expenses under the same authority (vide p. 133), the Department pays for all these small items.

The miscellaneous expenditures that concern the pilots as a group are also entered under this heading. For instance, in 1962, this item amounted to \$876.70 of which \$600 went to the Pilots' Committee as an advance for their travelling expenses connected with a trip to Ottawa to meet the officials of the Department of Transport. The refund of the unexpended money was not paid to the pool but to the pilots' "Group Fund". Before any group expenditure is made it must be officially requested by the Pilots' Committee and approved by the Supervisor.

(b) *Pension Fund Deductions*

The authority for this was subsec. 9(6) of the By-law. As will be explained at the end of this chapter, these deductions were merely intended to re-establish the actuarial solvency of the pension scheme which has been closed as of 1956. Since this objective was attained in 1966, deductions have been discontinued from that date.

(c) *Pilots' Personal Deductions*

Either because the pilots are considered actual employees of their Pilotage Authority, or as a personal service to them, the Supervisor also takes from their "take home pay" the deductions at source for income tax and the

Canadian Pension Plan. The pilots' contribution to their "Group Fund" are similarly paid in the amount decided by the Pilots' Committee. The contribution was \$2 per month until June, 1967, when it was raised to \$4. However, a special assessment has to be made occasionally, e.g., the contribution for February, 1961, was \$17. None of these deductions, which are all of a private nature, appear on the financial statement.

COMMENTS

The foregoing is another example of the extensive and unnecessary discrepancies in the accounting procedure of the various Districts. (Vide Part I, General Recommendation 17, item 15, p. 508; General Recommendation 20, pp. 522 and 523.) Furthermore, a financial statement should always correspond to reality and the practice now followed in Halifax should be corrected.

8. PENSION FUND

For a number of years the Pension Fund has been a source of frustration for the Halifax pilots. The problem has been solved by discontinuing the pension scheme and letting the pilots provide for retirement protection on their own. The pension benefit scheme was terminated with the fiscal year 1955/56 and the Pension Fund maintained solely for the purpose of meeting the accrued liabilities. The limited contributions the pilots were required to make were discontinued as of July 1, 1966, when the Fund attained solvency.

When first established, the Fund was a true Pilot Fund, the only permissible type under the Act (vide Part I, C. 10). For instance, the 1893 amendment to the District By-law left the amount of the pension benefits to be awarded to retired pilots and to the dependents of deceased pilots to the discretion of the Pilotage Authority within a minimum of \$50 per year and a maximum of \$300 per year; benefits were paid directly out of the Fund and investment was considered only for that part of the Fund that remained unexpended after current liabilities had been met.

When the Minister became the Pilotage Authority the Fund was changed into a Superannuation Fund for which the benefits were no longer left to the discretion of the Pilotage Authority but were fixed by the regulations. The first By-law made by the Minister (P.C. 1042 of May 15, 1920) provided a retired pilot after five years' service with pension benefits amounting to \$20 per year of service with a maximum of \$600; the pilots' compulsory contribution was set at 5 per cent of the gross earnings. The pension provisions were modified many times and when the pension scheme was cancelled in 1955/56 the benefits stood at \$40 per year with a \$1,600 maximum.

The loss of the pilot vessel *Hebridean* in 1940 when six pilots drowned, and the reimbursement to the war-time temporary pilots of their aggregate contribution when they were retired created a heavy drain on the already insolvent Fund.

The unsatisfactory state of affairs was aggravated by the fact that the pilots requested that the benefits be increased despite the Fund's insolvency. Actuarial surveys were made and the pilots were faced with the obligation of paying heavy contributions while receiving very few benefits. Instead, the Halifax pilots requested liquidation of the fund and repayment to the active pilots of their equity. However, it was ruled that the Fund should be maintained to pay the then acquired pension benefits. This meant that part of the active pilots' contributions would have to be diverted to make good the accrued deficit gradually, as was done in the Saint John District (vide p. 136). This posed a serious problem because the Halifax Fund then showed a deficit of \$72,000. In 1953, the Government made an *ex gratia* payment of \$56,000 to the Fund upon receiving the pilots' agreement to make a contribution of 10 per cent of their earnings.

But this did not resolve the basic problem of providing reasonable pension benefits. The pilots then proposed that for the future the nature of the pension scheme should be basically modified. They suggested that the pension scheme be concluded as of March 31, 1956; that the contribution be raised to 15 per cent, 5 per cent being attributed to the old scheme to meet its liabilities; that pilots with less than five years' service (of whom there were four), would be reimbursed the aggregate of their contributions; that the remaining 10 per cent of the contribution be used to purchase Government bonds to provide pensions for the active pilots. The proposal was implemented but lasted only from March 31, 1956, until June, 1957, because tax-free deductions for the purpose of purchasing bonds for superannuation were not permissible. The 10 per cent already collected was reimbursed with the result that, except for the rights acquired up to the end of the fiscal year 1955/56, the pilots were no longer provided with any pension benefits. Nevertheless, they were required to pay 5 per cent of their earnings until the solvency of the Fund was re-established. When tax-free deductions for pension purposes were later authorized by an amendment to the Income Tax Act the pilots did not ask for a revision of their pension situation because they felt that they could do better individually. This was the situation when the Commission sat in Halifax in 1963 and not unnaturally the pilots were extremely dissatisfied with the situation. They recommended that they be brought under the Public Service Superannuation Act on an equal footing with public servants so that half of the pension contribution be paid directly out of public funds, which can not be done unless the governing Act is changed.

The most attractive feature of the proposal that the pilots become prevailing rate employees was the pension advantages involved, especially for the older pilots.

When the Fund became solvent in 1966, it was decided to discontinue the 5 per cent contribution as of July 1. The pilots were warned, however, that if the mortality experienced turned out to be unfavourable or if investment returns decreased, contributions would have to be reimposed for a period, the length of which would depend upon the extent of the shortage (Ex. 1531 (o)).

For the Commission's views on the course of action to adopt, reference is made to Part I, General Recommendation 39, pp. 581-4.

Chapter D

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE HALIFAX PILOTAGE DISTRICT

RECOMMENDATION No. 1

That an Order Be Made without Delay by the Governor in Council to Give Legal Existence to, and Fix the Limits of, the Halifax Pilotage District

As demonstrated (p. 156), the Halifax Pilotage District ceased to exist legally when the 1934 Canada Shipping Act came into force. Furthermore, as explained on pp. 157 and ff., the only existing Governor in Council's Order dealing with its limits purported to make it a coastal District extending some 115 miles. In view of the importance of Halifax as a port and the need for maintaining an adequate pilotage service there, the present situation should be remedied immediately by the issuance of an Order by the Governor in Council under sec. 324 C.S.A. to restore the legal existence of the Halifax District and fix its limits realistically as a port Pilotage District covering only the waters of the harbour, including Bedford Basin, and its immediate seaward approaches.

RECOMMENDATION No. 2

Pilotage in Halifax to Be Classified as a Public Service

Halifax is one of Canada's safest and least difficult harbours to navigate (vide pp. 187 and ff.). There is only a remote possibility that a serious shipping casualty could block the main channels of Halifax Harbour for any appreciable period. On the other hand, in view of the importance of the ocean-going traffic calling there and of the port as a national harbour, it is necessary in the public interest to place an efficient pilotage service at the disposal of shipping. Therefore, in accordance with the criteria established in General Recommendation 17, it is considered that pilotage at Halifax can not normally be classified an *essential service* but should be classified as a *public service* (vide Part I, p. 509, for the meaning of these terms).

The main consequence of this classification would be that pilotage would not be compulsory unless made so by a Pilotage Order issued by the Central Authority and to the extent decreed therein (Part I, General Recommendation 22, p. 532).

The Commission's study of pilotage operations in Halifax indicates that the application of the present compulsory payment system was not dictated by considerations of safety but was merely a means of increasing pilotage revenues by taxing shipping and imposing compulsory payment on vessels which generally neither need nor employ pilots and enjoy a relative statutory exemption. This conclusion is further supported by the large percentage of ships that dispense with pilots (despite the fact they are obliged to pay dues in full or in part) without imperilling the safety of navigation or port installations.

The evidence has shown that the Pilotage Authority fully appreciated the fact that there was no need for compulsory pilotage in the District and intended to abolish it eventually (vide p. 208).

If General Recommendation 22 is implemented, it will be possible for the Central Authority to impose compulsory piloting in certain very specific cases by an appropriate Pilotage Order, e.g., for vessels carrying dangerous cargoes, but only to the extent required by considerations of general safety and public interest.

If General Recommendation 21 is implemented, classification as a *public service* will enable the District to benefit from the Central Equalization Fund maintained and administered by the Central Authority, to the extent the subsidy is genuinely needed in the public interest.

RECOMMENDATION NO. 3

Pilotage Administration and Pilot Vessel Service in Halifax to Be Reorganized on a More Economical Basis

The organization of the pilotage service at Halifax should be reassessed to ascertain whether the existing expensive system is warranted now and in the foreseeable future. As the demand for pilotage in the District diminishes there is a tendency to retain the organization and division of functions justified by high demand, and a consequent reluctance to reduce staff. The correct approach to the problem is to disregard present arrangements and plan afresh for a suitable organization in the light of today's circumstances and needs and those likely to be encountered in the future. Only when such a study has been completed can the adequacy of the existing organization be weighed and any necessary changes made.

At first sight, it appears excessive to employ a permanent staff of 20 (not counting temporary personnel or the officers and employees at Ottawa headquarters) merely to attend to the local administration and transporta-

tion of 12 pilots who completed a total daily average of 9.7 assignments in 1967. Halifax is organized on a basis comparable to Districts handling extensive traffic, e.g., Quebec, Montreal and British Columbia, where the number of pilots and their aggregate workload are many times greater.

Supporting staff and the pilot vessel service should be reconsidered in the light of the present demand for pilotage, observing that the trend is to larger but fewer ships. Advantage should also be taken of the present state of technology and general progressive changes.

It is suggested that a *job analysis* of the workload and function of each member of the staff would permit a considerable reduction without affecting the efficiency of the service.

The despatching system should be reorganized and simplified. The existing organization is a relic of the past and has not been adjusted to the present. A large staff was necessary when traffic was heavy and forward planning was impeded by lack of communications with ships at sea and by the unreliability of ships' movements, generally due to weather conditions. The situation is now completely changed by more powerful and faster ships equipped with electronic shipborne navigational and communication aids which permit them to maintain a more accurate schedule. The average margin of error in a 12-hour ETA is now so small it can be disregarded.

In Halifax and elsewhere, the despatching system should be reorganized on the basis of advanced ETA's from vessels requiring a pilot. Any inconvenience caused by failure to give such an ETA should be borne by the ship concerned and not by other ships which have complied. This requirement will have to be specifically provided for in the new pilotage legislation as pointed out in Part I, pp. 208 and 209; pp. 230 and ff.; and p. 250.

Vessels should be required to give a stated minimum advance ETA (e.g. 12 hours). If there is any delay, this ETA should be confirmed or corrected at a given time (e.g. nine hours later) and a final ETA sent (e.g. three hours in advance). Such notices would enable the Supervisor or the official in charge of despatching to effect most assignments during normal office hours. In Victoria B.C., assignments for the night and for the first part of the next morning are usually given to the pilots before 6 p.m. There is no reason why this could not be done elsewhere.

The present despatching staff of four should be dispensed with. It is preposterous to have an average of less than 10 assignments per day handled by four despatchers, in addition to the Supervisor, his accountant, his secretary and the 13 persons attached to the pilot vessels. What little despatching has to be done could well be attended to during normal office hours by the Supervisor himself, with the routine part being attended to by the accountant whose work is directly connected. In British Columbia, the despatchers also compute dues and bills with satisfactory results. In a port like Halifax where there is so little despatching and, therefore, few accounts, the two functions should be combined.

The small number of night assignments do not warrant keeping a special despatching staff on duty all night. Advantage should be taken of the availability of the pilot vessel crews since their service must be maintained on a 24-hour basis. The pilot vessels are already equipped with radiotelephone for ship-to-ship and ship-to-shore communication. They could also be equipped with a land telephone on the same line as the pilotage office telephone. The pilot vessel telephone could be attended to after normal office hours by the Master who would receive daily the list of night assignments already given and the names of the pilots next on the tour de rôle. Thus, if an unexpected requirement for a pilot arose, the Master could call the next pilot in turn, and in case of difficulty he could contact the Supervisor who would take the necessary despatching action.

From the point of view of time on duty, the functions of Supervisor, or officer in charge of the pilotage office, should be comparable to those of a Master of a ship and not to an office employee who works only during certain hours of the day. Like the Master of a ship he should be considered on duty at all times. When he has to be absent from the District or for any reason is not in a position to exercise his functions, there should be some one in authority to relieve him.

Considerable additional savings might well be effected by reorganizing the pilot vessel service to take full advantage of the land transportation system and water transportation in the harbour available from other sources. Consideration should also be given to moving the base of the main pilot vessel from the harbour to a suitable shore site as close as possible to the boarding area. (For further comments, vide pp. 217-218.)

Chapter E

APPENDICES

APPENDIX A

- (1) Per Cent Increase or Decrease in Earnings and Workload of Pilots in the Pilotage District of Halifax, N.S.
- (2) Earnings and Workload of Pilots in the Pilotage District of Halifax, N.S.

APPENDIX B

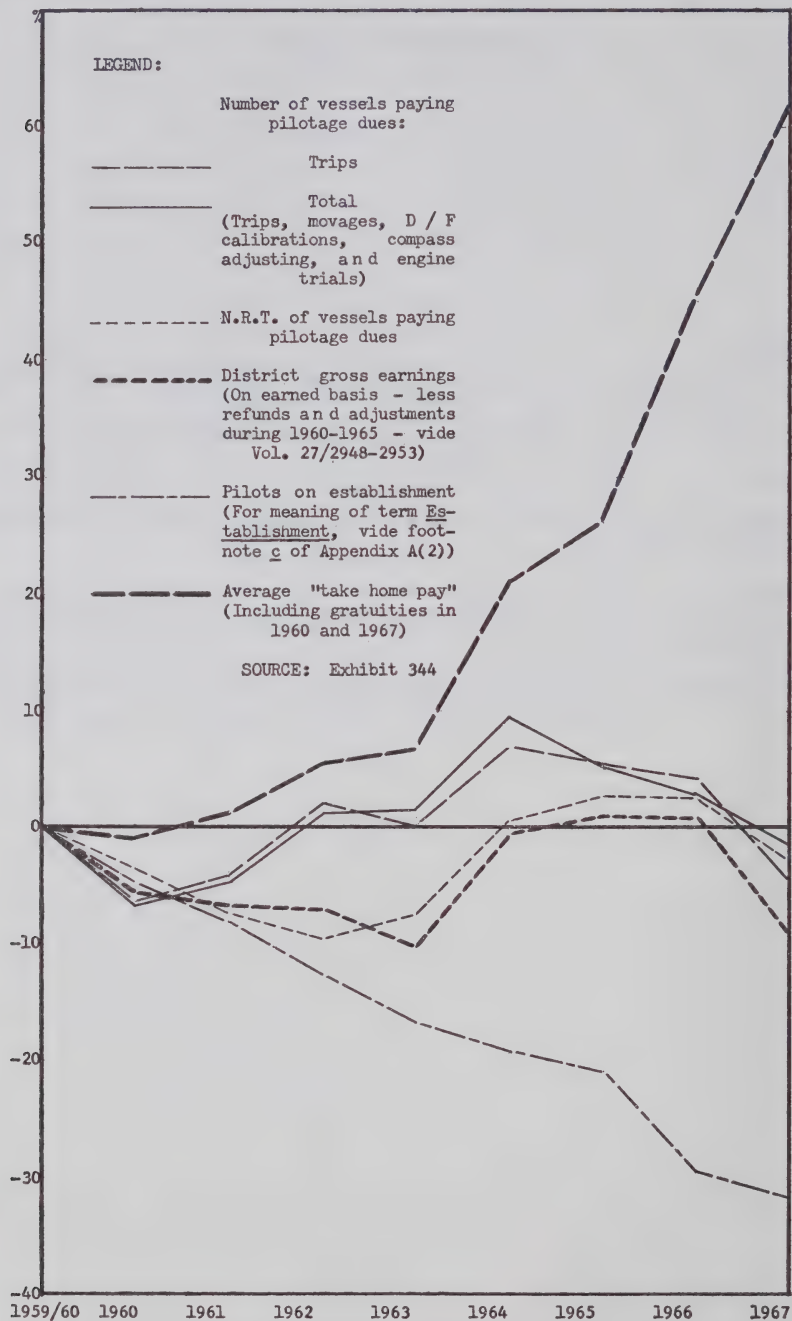
Number of Trips per Month for which Pilotage Dues were Charged in the Pilotage District of Halifax, N.S.

APPENDIX C

- (1) Shipping Casualties, Accidents and Incidents Involving Pilots of the Pilotage District of Halifax, N.S.
- (2) Summary of Shipping Casualties, Accidents and Incidents Involving Pilots of the Pilotage District of Halifax, N.S., 1965-1967.

Appendix A (1)

PER CENT INCREASE OR DECREASE IN EARNINGS AND WORK-LOAD OF PILOTS IN THE PILOTAGE DISTRICT OF HALIFAX, N.S.



SOURCE OF INFORMATION: Exhibit 344.

Appendix A (2)

EARNINGS AND WORKLOAD OF PILOTS
IN THE PILOTAGE DISTRICT OF HALIFAX, N.S.

Year	Number of Vessels Paying Pilotage Dues		N.R.T. of Vessels Paying Pilotage Dues	District Gross Earnings ^b	Pilots on Estab- lishment ^c	Average "Take Home Pay"
	Trips	Total ^a				
1959/60....	3,514	4,376	15,865,469	\$225,417.43	20.98	\$10,135.91
1960.....	3,297	4,084	15,330,441	213,341.90	20.0	10,052.44 ^d
1961.....	3,374	4,173	14,700,436	210,717.03	19.3	10,263.81
1962.....	3,591	4,425	14,370,845	210,155.92	18.4	10,702.11
1963.....	3,518	4,451	14,689,733	202,407.50	17.5	10,829.77
1964.....	3,760	4,796	15,965,172	221,867.06	17.0	12,258.89
1965.....	3,708	4,603	16,320,782	225,738.81	16.6	12,791.00
1966.....	3,662	4,507	16,282,010	225,471.16	14.8	14,745.33
1967.....	3,363	4,313	15,454,974	204,550.14	12.4	16,414.44 ^d
<i>Per Cent Increase or Decrease</i>						
1959/60....	0.0	0.0	0.0	0.0	0.0	0.0
1960.....	-6.2	-6.7	-3.4	-5.4	-4.7	-0.8
1961.....	-4.0	-4.6	-7.3	-6.5	-8.0	1.3
1962.....	2.2	2.3	-9.4	-6.8	-12.3	5.6
1963.....	0.1	1.7	-7.4	-10.2	-16.6	6.9
1964.....	7.0	9.6	0.6	-1.6	-19.0	21.0
1965.....	5.5	5.2	2.9	1.0	-20.9	26.2
1966.....	4.2	3.0	2.6	1.0	-29.5	45.5
1967.....	-4.3	-1.5	-2.6	-9.3	-31.4	61.9

SOURCE OF INFORMATION: Exhibit 344

^aTrips, movages, D/F calibrations, compass adjusting, and engine trials.

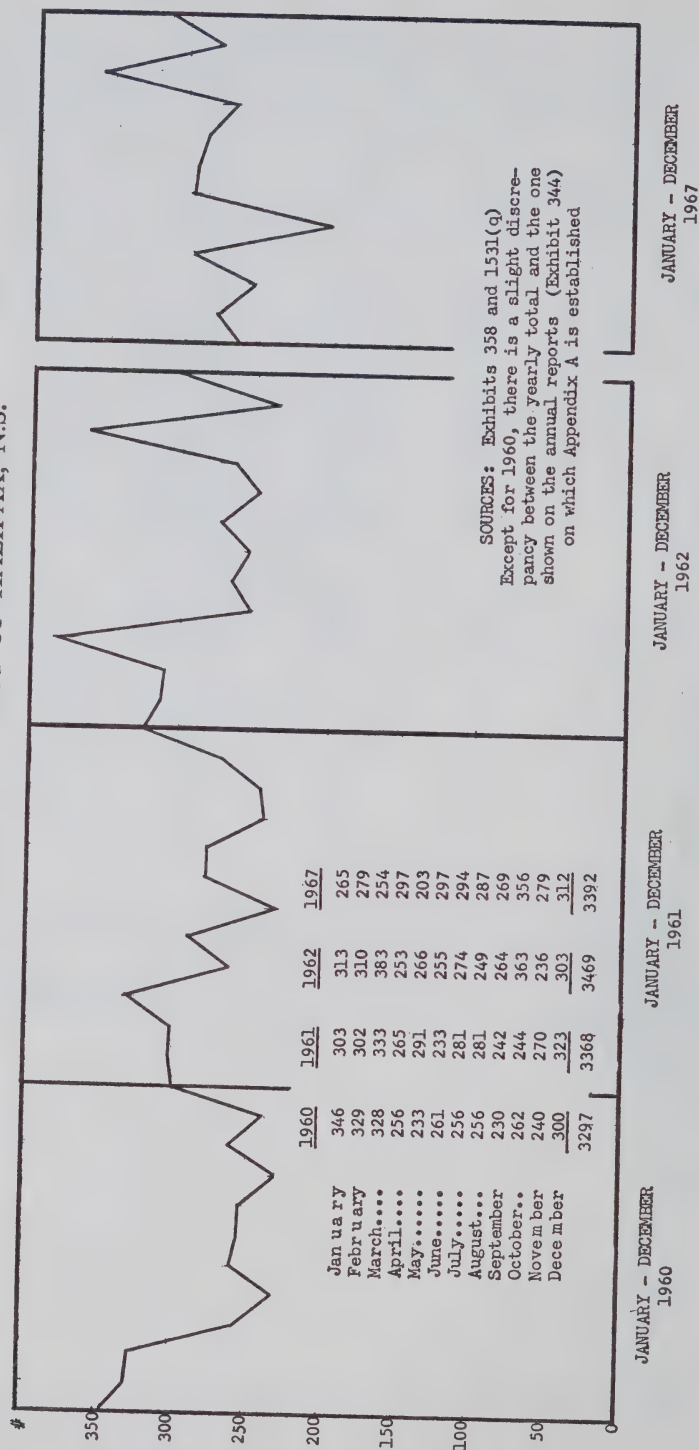
^bOn earned basis—less refunds and adjustments (1960–1965).

^c*Establishment* means the number of pilots on a yearly basis, taking into consideration any increase (i.e., new or probationary pilots) and any decrease (i.e., retirements, deaths, etc.) that occurred during the year.

^dIncluding gratuities.

Appendix B

NUMBER OF TRIPS PER MONTH FOR WHICH PILOTAGE DUES WERE CHARGED
IN THE PILOTAGE DISTRICT OF HALIFAX, N.S.



Appendix C (1)

SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS INVOLVING PILOTS OF THE
PILOTAGE DISTRICT OF HALIFAX, N.S.

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
A. EVENTS HAPPENING WHILE NAVIGATING:										
I. Major Casualties										
(with or without loss of life):										
a. Loss or abandonment of ship.....	0	0	0	0	0	0	0	0	0	0
b. Major stranding.....	0	0	0	0	1	0	0	0	0	0
c. Heavy damage to ship (excluding above).....	0	1	0	0	0	0	0	0	0	0
II. Minor Casualties (without loss of life):										
a. Minor strandings.....	0	0	0	0	0	0	0	0	0	0
b. Minor damage to ships.....	1	0	1	0	0	0	0	0	0	0
III. Accidents (without damage to ships).....	—	—	—	—	—	—	—	—	—	—
IV. Incidents (without any damage whatsoever)										
a. Touching bottom in channel.....	0	0	1	0	0	0	0	0	0	0
b. Others.....	0	0	0	0	0	0	0	0	0	0
	—	—	—	—	—	—	—	—	—	—
	1	1	2	0	1	0	0	0	0	0

Appendix C (1)

SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS INVOLVING PILOTS OF THE
PILOTAGE DISTRICT OF HALIFAX, N.S.—concluded

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
B. EVENTS HAPPENING WHILE BERTHING, UN- BERTHING, OR AT ANCHORAGE:										
I. Major Casualties (with or without loss of life).....	0	0	0	0	0	0	0	0	0	0
II. Minor Casualties:										
a. Minor strandings.....	0	0	0	0	0	0	1	0	0	0
b. Minor damage to ships:										
i. Striking pier.....	10	9	3	4	8	1	4	4	5	4
ii. Striking vessel berthing.....	0	2	0	0	0	0	1	0	0	2
iii. Striking vessel at anchorage.....	0	12	3	4	0	0	0	4	0	0
III. Accidents (without damage to ships):										
a. Damage to pier.....	0	0	0	0	0	0	1	0	1	0
b. Damage to buoys.....	0	0	0	0	0	0	0	0	0	0
c. Others.....	—	—	—	—	—	—	—	—	—	—
IV. Incidents:										
a. Striking pier.....	0	0	0	0	0	0	1	0	2	0
b. Striking vessel at pier.....	0	0	0	0	0	0	0	0	1	1
	10	12	3	4	8	1	8	4	9	8
Total Shipping Casualties, Accidents and In- cidents Involving Halifax Pilots.....	11	13	5	4	9	1	8	4	9	8

SOURCES OF INFORMATION: Exhibits 342, 347, 866, 1451 and 1467

Appendix C (2)

SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS INVOLVING PILOTS OF THE PILOTAGE DISTRICT OF HALIFAX, N.S., 1965-1967.

During the ten-year period 1958-1967, seventy-two casualties, accidents etc., involving pilots occurred. For the past five years, the entire thirty events happened while berthing or unberthing. Details of the twenty-one casualties occurring in 1965, 1966 and 1967 are as follows:

A. EVENTS HAPPENING WHILE NAVIGATING—Nil.

B. EVENTS HAPPENING WHILE BERTHING, UNBERTHING OR AT ANCHORAGE:

I. MAJOR CASUALTIES (with or without loss of life)—Nil.

II. MINOR CASUALTIES:

a. Minor Strandings—Nil.

b. Minor Damage to Ships:

(i) Striking pier:

1. January 23, 1965—*Manchester Spinner*—cause: high wind.
2. February 1, 1965—*Sumnar*—cause: wind and tug; dead ship.
3. February 19, 1965—*Halifax City*—cause: wind and poor visibility.
4. July 12, 1965—*Costas Michalos*—cause: engine trouble.
5. January 8, 1966—*Than Giutigte*—cause: dead ship.
6. January 30, 1966—*Husaro*—cause: wind.
7. June 7, 1966—*Aragats*—cause: Master's error.
8. June 8, 1966—*Irvingglen*—cause: wind.
9. November 24, 1966—*Newfoundland*—cause: tug error.
10. March 4, 1967—*Irvingstream*—cause: manoeuvring.
11. May 28, 1967—*Lockflethersand*—flare of bow struck roof of shed; cause: tidal current.
12. August 14, 1967—*Gem* struck drydock shoulder; cause: poor team work.
13. November 20, 1967—*City of Melbourne*—cause: engine failure.

(ii) Striking vessel berthing:

1. March 30, 1967—*Ste. Foy* struck life-boat of M.V. *Brion* at Dartmouth Shipyards; cause: engine failure; damage: life-boat.
2. May 8, 1967—*Neptune* struck *Federal Pioneer* when being placed alongside her by two tugs; cause: alleged tug error; damage: slight.

III. ACCIDENTS:

a. Damage to pier:

1. February 3, 1966—*P.M. Crosbie's* rail hooked top of wharf; cause: manoeuvring; no damage to ship.

b. Damage to buoys—Nil.

c. Others:

1. April 6, 1967—*Surrey Trader* struck elevator gallery support while berthing; cause: speed; some damage to elevator support—no damage reported to ship; *pilot cautioned*.

IV. INCIDENTS:

a. Striking pier:

1. March 1, 1966—*Sunvalley*—cause: wind; no damage.
2. May 10, 1966—*Ohshima Maru*—cause: current; no damage.

b. Striking vessel at pier:

1. November 11, 1966—*Cintra* struck *North Star VI* at quay; cause: wrong engine movement; no damage reported.
2. January 17, 1967—*Niobe* settled alongside *Tariq* while berthing; cause: manoeuvring; no damage.

Section Four

CAPE BRETON ISLAND AREA

INTRODUCTION

The only pilotage services of importance which now exist in the Cape Breton area are in (a) the ports of Sydney and North Sydney, (b) the Bras d'Or Lakes and their access routes, (c) the Point Tupper-Port Hawkesbury section of the Strait of Canso.

Although these services are divided into two separate Districts (Sydney and Bras d'Or Lakes Districts) and one non-organized area, they are, in fact, interconnected either administratively or because they are performed by the same pilots.

Originally, the confined waters along the Cape Breton Island coast and its inland waters were all divided into a number of small separate, independent Pilotage Districts¹ but with the changing situation they have either disappeared or been amalgamated in fact or in law. The present Bras d'Or Lakes District is the result of the 1943 amalgamation of the former Bras d'Or District and the Richmond County District. At the same time, the new District, while remaining separate for pilotage services, was merged with the Sydney District for administrative purposes under the same Pilotage Authority. Most pilotage in the non-organized area of the Strait of Canso is performed by the Bras d'Or Lakes District pilots with the permission and assistance of their Pilotage Authority.

On account of their inter-relation, these services are studied together in this Section: Subsection I deals with the District of Sydney, Subsection II with the Bras d'Or Lakes District and the unorganized area of the Canso Strait, and Subsection III contains the Commission's Recommendations applying to the whole of the Cape Breton area as well as to each separate pilotage zone.

¹ In 1889, the following Pilotage Districts existed in Cape Breton: Bras d'Or Lake and Great and Little Bras d'Or; Glace Bay; Louisburg; Richmond County; Sydney and North Sydney.

Subsection I

PILOTAGE DISTRICT OF SYDNEY, N.S.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Except for the Appropriation Act No. 9, 1966, Schedule D, item 8c, Department of Transport, there are no statutory provisions of exception for the Pilotage District of Sydney. It is wholly governed by the provisions of the Canada Shipping Act which are applicable generally to the pilotage service and its organization. There are, however, a number of Orders in Council, by-laws and regulations that specifically concern this District.

(1) CREATION OF THE DISTRICT

The present District of Sydney was created by an Order of the Governor in Council of June 19, 1885 (P.C. 1177, Ex. 1535(c)) which divided the coastal Pilotage District of Sydney established by a Governor in Council Order dated April 9, 1874 (Ex. 1535(a)), thereby cancelled, into two separate Districts, the present Sydney District and the Glace Bay District (abrogated as inoperative in 1920).

Its official name is the Pilotage District "for the Ports of Sydney and North Sydney".

This 1885 Order in Council has never been amended or repealed and, hence, is still in effect. The 1889 Order in Council (P.C. 1261 dated June 12, 1889, Ex. 1532), which deals with the same subject in sec. 35, was, in fact, merely a consolidation of all the relevant sections of the existing Orders in Council (vide pp. 159-160) and did not abrogate or modify the 1885 Order in Council either explicitly or implicitly.

(2) DISTRICT LIMITS

The limits of the District were last defined by Order in Council P.C. 1964-1322 of August 25, 1964 (Ex. 1535(b)) as follows:

"The Pilotage District of Sydney, Nova Scotia, comprises the navigable waters inside a line drawn from Swivel Point to McGillivray Point, and the waters six miles to seaward of such line".

This Order in Council revoked the description of the limits as fixed by the 1885 Order in Council referred to above.

(3) PILOTAGE AUTHORITY

The Minister of Transport is the Pilotage Authority. The last appointment to this office was effected by Order in Council P.C. 1956-1264 dated April 15, 1956 (Ex. 1143).

(4) COMPULSORY PAYMENT OF PILOTAGE DUES

The 1885 Order of the Governor in Council creating the District decreed the compulsory payment of dues. This part of the Order in Council has never been revoked and is still in effect. The remark in *Creation of the District* concerning the 1889 Order in Council also applies in this connection.

(5) ORDERS IN COUNCIL NOT PASSED UNDER THE CANADA SHIPPING ACT AND AFFECTING THE ORGANIZATION OF THE PILOTAGE DISTRICT

(a) *Assumption by the Crown of District and Service Operating Expenses*

By Order in Council P.C. 1959-19/1093 dated August 27, 1959 (Ex. 52) the Department of Transport was granted authority with respect to a number of Districts, including Sydney, to assume the cost of pilot stations and pilot vessel service whether owned or hired. It replaced Order in Council P.C. 120/422 of January 25, 1951 (Ex. 52) which had granted similar authority as far as Sydney was concerned. It is under this authority that the Department of Transport absorbs all the operating costs of the District and the operational deficit of the auxiliary services.

(b) *Legislation Relating to the Pilots' Status as Crown Employees*

On March 17, 1966, the Treasury Board, pursuant to sec. 7 of the Financial Administration Act (T.B. Minute 649126 (Ex. 1535(i))), authorized the employment of the Sydney pilots in the Public Service as prevailing rate employees. This Order will be studied later (pp. 293-294).

Because the pilots became entitled to pension benefits under the Public Service Superannuation Act, it became necessary to settle the question of the *Sydney Pension Fund*. By a provision contained in the Appropriation Act No. 9, 1966, the Crown was authorized to take over the assets and liabilities of the Sydney Pension Fund on terms and conditions to be fixed by the Governor in Council. On January 19, 1967, by P.C. 1967-114 (Ex. 376) the Governor in Council under the said authority made the "Sydney Pilots' Pension Regulations", fixing terms and conditions to cover, *inter alia*, the transfer of assets, the assumption by the Crown of liabilities and the retroactivity of superannuation benefits for active pilots. This legislation is studied pp. 299-300.

(6) PILOTAGE AUTHORITY'S ENACTMENTS CONFIRMED
BY GOVERNOR IN COUNCIL

No regulations made by the Pilotage Authority under subsec. 327(2) C.S.A. now exist nor is there any authorization granted by the Governor in Council under sec. 328 C.S.A.

The only regulations made by the Pilotage Authority were those made under subsec. 346(c) and sec. 347 C.S.A. regarding exemptions, and the By-law under sec. 329 C.S.A.

(a) *Exemptions for Small Ships (subsec. 346(c) C.S.A.) and Withdrawal of Exemptions (sec. 347 C.S.A.)*

At the time of the Commission's hearing at Sydney, sec. 6 of the By-law then in force made the following provisions for exemptions:

(i) All vessels of less than 1,000 tons net were indirectly exempt in that subsec. 6(1) made the payment of dues as set forth in the schedule compulsory only for vessels of 1,000 tons net and over. This was obviously illegal because the limit of the legislative power of the Pilotage Authority in this domain is restricted by subsec. 346(c) C.S.A. with regard to foreign ships not exceeding 250 tons net. This provision was also ultra vires in that it purported to withdraw all the absolute exemptions for over 1,000 tons net (vide Part I, pp. 221 and ff.).

(ii) The relative exemption of subsec. 346(e) C.S.A. for steamships registered in any of Her Majesty's dominions was left unchanged insofar as it applied to steamships engaged in voyages described in subsec. 346(e)(i), i.e., voyages wholly performed within the confines of the harbour, and it was withdrawn partially for such steamships engaged in other voyages mentioned in subsecs. 346(e)(ii) and (iii) in that two-thirds of the dues were payable if a pilot was not employed. This provision was legal. (One result was that the C.N.R. ferry vessels plying daily between North Sydney and Port aux Basques came under this provision.)

(iii) It further provided for a general exemption for all vessels that did not enter the harbour but remained in the open waters of the District boarding area, i.e., seaward of a line drawn from Cranberry Head to Flat Point, provided that they did not load or discharge cargoes or take on fuel or stores.

Following the Commission's hearings these provisions were amended three times, mainly to reduce gradually the large indirect subsidy the District was obtaining from the C.N.R. ferries:

(i) In 1964, full exemption was granted to all small vessels not exceeding 250 tons and the fraction of pilotage dues compulsorily payable by the ferry vessels was lowered to one-third.

(ii) In 1965, the amount of dues to be paid by ferries was lowered to one-fifth.

(iii) In 1966, sec. 6, as amended, was repealed and replaced by the existing provisions. These leave the statutory exemptions of sec. 346 C.S.A. unchanged and extend full exemption to all small foreign vessels not exceeding 250 tons. The only point left in doubt was the use of the word "vessel" as defined in the By-law (vide Part I, pp. 218 and ff.). As a result of this amendment the C.N.R. ferry vessels are now completely exempt.

(b) *General By-law*

All the by-laws and regulations enacted by the Pilotage Authority still in effect are contained in a General By-law confirmed by Order in Council P.C. 1961-1284 (Ex. 376) dated September 7, 1961. It has been amended substantially since the Commission's public hearing in Sydney in 1963.

The regulations covering exemptions have already been reviewed. The other main features may be summed up as follows (the cross-reference at the end of para. (i) indicates where the validity of the matter is dealt with):

(i) The Pilotage Authority exercises full control over the provision of pilotage services through its local representative, the Supervisor of Pilots (Part I, c. 4, pp. 73 and ff.).

(ii) The 1961 By-law first provided for pilots whose status was that of *de facto* employees and whose remuneration was provided through a pool system. The fact that the pilots have since become Crown employees under the prevailing rate system is only indirectly dealt with in that all the provisions inconsistent with their new status were deleted December 9, 1966, i.e., sec. 9 dealing with the existence, administration and sharing of the pool; sec. 5 which provided for a Pilots' Committee; sec. 14 dealing with probationary licences; sec. 23 purporting to give the Pilotage Authority disciplinary powers and setting out the disciplinary procedure; subsecs. 5, 6 and 7 of sec. 24 dealing with sick leave, and secs. 26 to 38 dealing with the Pension Fund. However, licensing was retained together with the customary provisions regarding despatching (P.C. 1966-2313 of December 9, 1966).

(iii) The prerequisites for obtaining a pilot's licence remain unchanged. They are the same as for Saint John except that a certificate of competency as second mate of a foreign-going steamship is also accepted (vide p. 33).

(iv) The dues for pilotage voyages and movages are based on net tonnage alone in the same fashion as for Halifax, i.e., providing fixed rates according to a scale based on net tonnage.

(v) There was a Pension Fund to which the pilots were contributing 16 per cent of their earnings (reduced to 12 per cent as of January 31, 1966); all these provisions were deleted by P.C. 1966-2313 when the pilots became Crown employees and, hence, were entitled to receive superannuation benefits under the Public Service Superannuation Act (vide p. 261).

2. HISTORY OF LEGISLATION

Up to 1831, in Sydney as in Halifax there was no pilotage legislation of any kind, anyone could offer his services as pilot and the profession was uncontrolled. Those who required pilotage services were free to set up their own organization or make arrangements with whoever was available.

This situation was changed in Sydney when an *ad hoc* statute was passed in 1831 to regulate pilotage in the "Port of Sydney". This Act (1 William IV c. 6, N.S.) contained the same general provisions as for Halifax the year before (vide p. 169). It empowered the Governor in Council to appoint a licensing authority in the form of a four-member Commission whose territorial jurisdiction extended to the limits of the port. The pilotage rates were fixed in the Act itself as a scale based on tonnage: first, per 100 tons from a minimum of 200, but by a 1837 amendment per 50 tons after the first 100 tons. This tariff structure is still in effect.

The Act, according to the legislative procedure then followed, was enacted for one year only but was periodically renewed on which occasions amendments were made. One of the more important amendments appeared in 1837 (7 William IV c. 10, N.S.). It provided for compulsory payment of dues at one-third rate for ships owned in the province, otherwise at one-half rate; vessels owned in the province and engaged in the coastal trade or fishery, vessels under 80 tons coming from New Brunswick, Prince Edward Island or Newfoundland and Government vessels were exempted.

The 1831 Act as amended was superseded in 1851 by a consolidation of all the *ad hoc* pilotage statutes and remained in force with minor amendments until superseded by the federal Pilotage Act of 1873 (vide p. 170). The two main amendments were in 1863 (26 Vic. c. 20, N.S.) extending the jurisdiction of the Sydney Commissioners to the port of Glace Bay, and in 1864 providing that the Port of Sydney included Glace Bay, Bridgeport, Lingan, Cow Bay and Little Glace Bay.

The 1873 Pilotage Act made no specific mention of the Pilotage District of Sydney. The only later statutory provision in which the Sydney District was specifically mentioned was sec. 36 of the 1886 Pilotage Act as amended in 1902, which authorized certain named Pilotage Authorities, including Sydney, to vary the relative statutory exemptions granted to steamships engaged in coastal and inland trading. This provision was retained in succeeding statutes until the privilege was extended by the 1934 C.S.A. to all Pilotage Districts.

On April 9, 1874, the Governor in Council, acting under the general power given to him under sec. 17 of the 1873 Pilotage Act, implicitly created the Sydney Pilotage District by fixing its limits and appointing a five-member Commission as its Pilotage Authority and made the payment of the dues compulsory (Ex. 1535(a)).

The limits fixed in the Order in Council covered the territory over which the former Pilotage Commission had had jurisdiction since the 1863 and 1864 amendments to the governing Nova Scotia statute, i.e., making it a coastal Pilotage District with limits

“...embracing the Ports, Bay, Harbors and Coasts situated between Cranberry Head, on the northern side of Sydney Harbor, and the southern Head of Cow Bay, in the said county of Cape Breton”.

Therefore, in substance, the same pilotage organization was maintained with the same territorial limits.

On June 14, 1875, new By-laws were sanctioned (Order in Council P.C. 628, Ex. 1535 (d)) retaining the features of the previous legislation. A two-year apprenticeship under a licensed pilot was one of the prerequisites to obtain a licence. It was the pilot's own responsibility to arrange for his transportation: he could either own a boat or belong to a “company of pilots”. Pilotage certificates were issued for an annual fee of four dollars; the fee for the first pilot's licence was four dollars, and two dollars for renewals. Pilots could not engage in any other employment between April 15 and December 31. The rates as fixed by the repealed Nova Scotia statute were continued in effect. Licensing was on the basis of ports and a Sydney harbour pilot on a vessel bound to one of the outports of the District had to surrender charge of the ship “upon being spoken by a Pilot properly belonging to the port for which the vessel is bound”. The maximum number of pilots for Sydney was 26 (raised to 27 in 1876), Lingan 10, Little Glace Bay and Port Caledonia 8.

The only sources of revenue for the Pilotage Authority to pay its limited administrative expenses were the fees for licences and pilotage certificates. Since the By-law did not make the dues payable to the Pilotage Authority, they remained payable to the pilots. There was no Pilot Fund.

The 1875 By-laws, which were amended several times, remained in effect for ten years.

In 1885, the present Sydney District was created by the division of the coastal Sydney District of 1874 into the District of Glace Bay and the District for “the Ports of Sydney and North Sydney” (P.C. 1177 of June 19, 1885, Ex. 1535 (c)). Its seaward limit, well inside the present limit, was “an imaginary line drawn between Cranberry Head on the northern side of Sydney Harbor and Low Point on the southern side of said Harbor”. This limit remained the only legal limit until it was altered in 1964.

The first set of By-laws of the Pilotage Authority of the new District of Sydney (P.C. 1959 dated October 19, 1885, Ex. 1535 (e)) barely reflected the change. The pilots were required to furnish securities as in the Halifax District. A system was created to provide for financing the Authority's operating expenses out of pilotage dues and fees obtained from licences,

pilotage certificates and bonds and to achieve this aim the By-laws provided for the collection of dues by the Authority using its appointed paid collectors. Five per cent of the pilots' earnings were to be "reserved as a pilotage fund", which fund was to serve for paying operating expenses. The collectors were to remit the monies collected to the Secretary-Treasurer who, after making the 5 per cent deduction, paid each pilot the net amount of his earnings (Ex. 1535 (e)).

These By-laws were also amended from time to time until superseded by a new set of By-laws from September 21, 1906, (P.C. 1876, Ex. 1535 (f)). One of the main amendments was to fix the remuneration of the Collectors of pilotage dues, the Secretary-Treasurer and the members of the Pilotage Authority. Sydney was one of the Districts listed in the General Order issued by the Governor in Council (P.C. 1194 of May 27, 1889, Ex. 1533) requiring the Pilotage Authorities to cease paying themselves a remuneration and paying their operating expenses without proper authority (vide p. 173). The Secretary of the Authority was to receive a salary of \$500, the Collector \$450 and the sum of \$600 was allowed for the expenses of the members of the Pilotage Commission. Other main changes were the increase of the annual fee for pilotage licence certificates to \$100; the reduction of the permissible number of pilots to 32 and of apprentices to 6; the appointment of a Superintendent of Pilots, to be chosen from the pilots, whose duties were to see that each pilot station was properly manned at all times, that steamers ready for sea were provided with pilots so that no possible delay would occur, to report to the Pilotage Authority all violations of regulations, to assist the Secretary in his inspection of boats and the Collectors in the collection of the pilotage dues, and to be always on hand to give information to Masters and receive instructions from the Pilotage Authority; the Superintendent's remuneration was fixed at "\$250 over and above his allowance as a pilot". The By-laws also provided for the operation of a Pilot Fund from which, at the discretion of the Pilotage Authority, retired pilots were to be paid a retiring allowance not exceeding \$100 per annum, and a pension of \$30 per annum to the widows of deceased pilots.

Robb Report

The Sydney District was included in the terms of reference of the 1918 Robb Royal Commission. Its report noted a number of unsatisfactory features:

- (a) There were by then a number of Collectors, one of whom was also a member of the Pilotage Authority. In 1913, he had misappropriated funds and had failed to make reimbursement despite demands from the Pilotage Authority. After he appeared before

the Royal Commission, the outstanding amount was finally collected by deductions from the remunerations he was drawing both as a Collector and a member of the Pilotage Authority.

- (b) A finance committee consisting of three pilots met every month with the Secretary-Treasurer to discuss the previous month's business and to decide on the division of the pooled earnings among the pilots and the apprentices and the settlement of accounts.
- (c) The 30 branch pilots in the District were divided into two shifts, each shift working one week in turn. They provided pilotage services in the "Bras d'Or Lakes" with permission from the Pilotage Authority to do so but receipts for these services were not entered into the pool.
- (d) Some of the pilots had little or no knowledge of charts and were using very crude methods to perform their duties.
- (e) Eight of the apprentices had apparently been appointed through political patronage. The branch pilots took no interest in assisting them to become acquainted with the Pilotage District of Sydney and their only duties were connected with manning the pilot vessel. The apprentices received half a pilot's share, which the Commission considered to be a most unusual and unnecessary tax on shipping.
- (f) The pilot vessel service was provided by one 30-foot gasoline launch owned by the pilots and manned by them and the apprentices. It had no sleeping accommodation and carried two small boats.
- (g) A number of pilots recommended that their number be reduced to 26 and the number of apprentices to four.

The Commission made the following recommendations for the Sydney District:

- 1 — The dues to be collected by the Collectors of Customs and the existing practice discontinued.
- 2 — A steam pilot vessel with accommodation for 12 pilots to be provided and used for Louisbourg when Sydney was closed during the winter; 7½ per cent of the gross earnings of the District to be applied toward the upkeep and running expenses of the pilot vessel; the pilots to be required to pay for meals on board at a rate fixed by the Superintendent.
- 3 — The Pension Fund to be taken over and managed by the Minister of Marine and Fisheries and the compulsory contributions raised from 2½ per cent to 5 per cent.

- 4 — The number of pilots to be gradually reduced by normal attrition until it reached 20.
- 5 — The local Commission to be replaced by the Minister of Marine and Fisheries as Pilotage Authority and a Superintendent with sea-going experience, (but not a pilot of the District) placed in full charge of the Sydney and Louisbourg Districts combined.
- 6 — Apprenticeship to be abolished.

Order in Council P.C. 854 of April 26, 1922, made the Minister the District Pilotage Authority (Ex. 1535 (g)).

On April 7, 1923, the Minister made his first General By-law which superseded the existing ones (P.C. 602, Ex. 1535 (h)). This By-law implemented a great number of the Robb Commission's Recommendations. Apprenticeship was abolished; recruiting was from qualified mariners with local experience in District waters; the first licence was probationary for six months; temporary licences could be issued in case of emergency; the system of Collectors was abolished; the principal officer of Customs was made the sole collector of pilotage dues; financial administration was centred in Ottawa; the bonding of pilots was abolished; the system of pilotage certificates was retained but the annual fees were substantially increased up to \$500 in certain cases; the same rate structure was retained but the distinctions between inward and outward voyages and between "the Ports of Sydney and North Sydney" were abolished; pilots were placed on either a salary of \$300 per month or a share of the net pilotage revenue of the District, whichever was less; sick leave and annual leave were introduced; the Pilot Fund became a superannuation fund providing \$20 pension per year of service to a maximum of \$800; the Pilots' Committee was established; compulsory payment did not apply to moorage charges.

This By-law was amended from time to time and complete new By-laws appeared in 1934, 1940 and 1955 before the existing By-law was enacted in 1961. Among the more important changes up to 1947 were: increasing the salary ceiling to \$4,500 per year (P.C. 2805 of January 26, 1940) and removing it because of increased work in wartime (P.C. 746 of January 31, 1941).

Slocombe Report

When Captain F. S. Slocombe made his survey in 1946-7 he found the Sydney District in a financial retrogression caused by an excess number of pilots for the greatly diminished traffic. Each pilot's monthly share was down to \$150, despite the fact that the By-law had been revised in 1940 to produce more pilotage revenue, first, by abolishing the practice of issuing pilotage certificates and, secondly, by partially withdrawing the

relative statutory exemptions granted to coastal and inland traders. However, the By-law still provided special rates for ships owned or chartered by the local producers of coal or local manufacturers of iron or steel. In addition, there was an unofficial arrangement not mentioned in the By-law whereby the Reid Newfoundland Company Limited, then operating the ferry service with Newfoundland, paid a flat rate of \$1,000 per year for their ferry passenger vessels *Burgeo* and *Kyle*, which between them made 143 visits to Sydney during the fiscal year 1945-46.

Re the operation of the service he reported as follows:

"The pilots are stationed in a building situated on Swivel Point which commands a view of the approaches to the harbour. When a ship is sighted a pilot is taken out to meet her.

There are two boats, the *Highlander 2*, ... and the *Irene H*, ... Both boats were fully paid for out of the Sydney Pilotage Fund and are owned by the Minister of Transport as Pilotage Authority. ... The *Highlander 2*, 55 feet in length, is used for boarding purposes. Her size permits her to be taken alongside the ships and in calm weather or with a wind offshore she is moored in Llyod's Cove just below the pilot station at Swivel Point. From these moorings the pilots must land on the beach by dory, and when the wind is from seaward the Cove provides no shelter, so that the vessels must be moored to a wharf at North Sydney, three miles up the harbour. In addition to the main station at Swivel Point, there is a building at Whitney Pier in Sydney. Both buildings were paid for out of the Pilotage Fund and are owned by the Pilotage Authority".

There were 17 pilots on strength at that time but two were on leave of absence. The 15 pilots worked in two shifts of seven, one week on and one week off duty, the extra man working from Thursday to Wednesday at the pilot station. Five of the seven pilots on duty were stationed at Swivel Point and two or three at Whitney Pier; all rotated in the various duties. A continuous visual watch was kept to seaward from Swivel Point station. If an incoming vessel was sighted when *Highlander 2* was in Lloyd's Cove, the pilot second in turn took charge and the pilot on turn met the ship. But when the pilot vessel had to moor at North Sydney the two pilots next on turn had to remain on board at the wharf, which left only three pilots on lookout duties at Swivel Point. After a pilot completed an inward assignment he had to return by land transportation to Swivel Point. Each pilot was allowed \$10 per month travelling expenses out of the Pilotage Fund for that purpose.

Movages and outward assignments were handled by the two or three pilots at Whitney Pier station. Upon completion of an outward assignment, the pilot was disembarked by the pilot vessel and returned to Whitney Pier.

Captain Slocombe also reported that the pilots did not claim any outstanding difficulty associated with pilotage into the harbour except in fog. The harbour was "usually closed by ice for a portion of the winter, but not always."

The pilots made strong representations to Captain Slocombe for a 25 per cent increase in all rates, abolition of special rates and the unofficial arrangement with the Reid Newfoundland Co. and complete withdrawal of relative exemptions. These recommendations were opposed by the shipping interests on the ground that the factors which had caused the reduction in earnings were temporary only.

On June 3, 1947 (Order in Council P.C. 2172) the tariff was amended to provide a 30 per cent increase in pilotage rates and special rates were abolished.

Audette Report

The 1949 Audette Report (Ex. 1330) contained nothing of importance dealing specifically with Sydney, but the District benefited greatly from those general recommendations that were implemented. One of these was the assumption by the Crown of the full cost of the pilot station and the pilot vessel service, which automatically resulted in a substantial increase in the individual pilot's "take-home pay".

The Committee's report also resulted in granting Sydney an indirect subsidy from public funds which was a substantial source of revenue for the District during the next 16 years. Before 1950, the Canada Shipping Act (sec. 338, 1934 C.S.A.) provided an absolute statutory exemption from the compulsory payment of pilotage dues for "Government ships". The Saint John and Sydney pilots saw in the C.N.R. ships that came regularly to their District a substantial potential source of income to improve their acute financial situation without increasing the rates. They urged that these vessels be required to make a contribution to the upkeep of the pilotage service like other coastal commercial vessels which were penalized by the partial withdrawal of relative exemptions in the By-law. The Audette Committee in a majority decision advocated the change. The Act was amended in 1950 and the absolute exemption was limited to Government ships that were not "entrusted for operation and management to an agency of Her Majesty" (subsec. 346 (b)) (14 Geo. VI c. 26 sec. 19).

This amendment made the C.N.R. ferry vessels fall into the category of ships enjoying relative statutory exemptions which could be withdrawn by By-law (as was then the case at Sydney). Therefore, until the By-law provision was repealed in 1966 the C.N.R. ferry vessels were required to pay part of the dues on each inward and outward voyage. This accounts for the high percentage of revenue derived from non-exempt ships dispensing with pilots.

The next important change occurred in 1966 when the pilots became Crown employees under the prevailing rate system. This will be studied later.

Chapter B

BRIEFS

Four briefs concern the District:

- (1) The Pilots of the Pilotage District of Sydney, N.S. (B. 22, Ex. 401).
- (2) Dominion Steel and Coal Corporation, Limited (B.25, Ex. 397).
- (3) Canadian National Railways (B.26, Ex. 402).
- (4) The Canadian Merchant Service Guild (B.53, Ex. 1382).

The cross-references indicate where the subject matter of each recommendation is dealt with in the Report.

(1) THE PILOTS OF THE PILOTAGE DISTRICT OF SYDNEY, N.S.

The pilots are not grouped in any association or corporation. Their brief contained the following recommendations:

- (a) The present (1963) basic pilotage system be preserved for the safety of navigation and shore installation.
- (b) The Southeast Bar fog alarm be relocated closer to the turning point off the Bar and improvements be made to the Battery Point Ranges (pp. 276-277).
- (c) Two pilot boats are necessary (pp. 290-291).
- (d) The number of active pilots not to be reduced below ten (pp. 282-284).
- (e) Pilotage dues to be computed on the net tonnage of ships as shown in Lloyd's Shipping Register and not on the reduced net tonnage resulting from subsequent re-measurement (p. 296 and Part I, C. 6).
- (f) Pilotage to be made the responsibility of a board of three members under the jurisdiction of the Minister of Transport (p. 281 and Part 1, General Recommendations 16, 17 and 18).

(2) DOMINION STEEL AND COAL CORPORATION, LIMITED

This Corporation operates a large steel mill and produces coal in Sydney and other Cape Breton areas. Vessels carrying its products are the largest employers of pilots. It recommends:

- (a) Pilotage dues to be more reasonable and set at a relative level with other ports in the area (p. 296).
- (b) The number of pilots to be reduced (pp. 282-284).
- (c) The cost of the service to be kept at a reasonable level (p. 296).

(3) CANADIAN NATIONAL RAILWAYS

This Crown Corporation operates vessels in two services which involve pilotage dues, a coastal service to the outports of Newfoundland and a ferry service between North Sydney, N.S. and Port aux Basques, Nfld.

The Company's brief contains six submissions directed to pilotage in ports of the Maritime Provinces, in particular to the pilotage dues assessed at Sydney and Port aux Basques. They recommended:

- (a) That vessels operating in a ferry service (whether operated by Canadian National Railways or by any other person or persons) should be wholly exempt from the payment of pilotage dues, except on those occasions when a pilot is actually engaged (p. 268, and Part I, Recommendation 23).
- (b) That the number of pilots employed in any Pilotage District should be no greater than those required to handle the traffic and that, regardless of the amount of pilotage dues collected, they be paid wages commensurate with the work they actually perform. If money collected as pilotage dues is more than is required to pay reasonable wages, such excess should be paid into the public treasury and applied toward the cost of providing harbour facilities (Part I, General Recommendation 20).
- (c) "The amount of work required of a pilot in the navigation of any ship bears little, if any, relationship to its tonnage; and since the liability of the pilot for error does not vary according to the tonnage of the ship being navigated, it is submitted that there is no sound basis for any variation in the amount of pilotage dues payable" (Part I, Cs. 6 and 7).
- (d) "If a variation in the amount of pilotage dues is to continue, a pilot who assumes control of the navigation of a ship should be responsible in damages to the extent of loss, damage or injury sustained by reason of his acts of omission or commission" (Part I, General Recommendation No. 11).
- (e) That the licensing of pilots should be entrusted to the Department of Transport rather than as, at present, to the Pilotage Authority

in order to ensure greater uniformity in the qualifications of pilots and, as a result, in the quality of pilotage Part I, General Recommendations Nos. 12 and 31).

- (f) That pilotage is as much a port facility as the provision of dockage, the dredging of channels, the locating of buoys, and the provision of other safety features and should, therefore, be provided by the Crown (preferably through the Department of Transport) as a port facility, and that those engaged in the occupation of piloting ships should be servants of the Crown (Part I, General Recommendations Nos. 14, 15 and 24).

(4) THE CANADIAN MERCHANT SERVICE GUILD

This brief, which is general in character, contains two submissions specifically concerning Sydney:

- (a) The Guild's National Pilots' Committee supports the position taken by the Sydney pilots against the exemption of vessels belonging to and/or chartered by Canadian National Railways. "Since any occasional or regular user of pilotage services should in all fairness to other users be called upon to contribute towards the cost of the service, there is no valid reason for the Canadian National Railways to be exempt from such obligation" (Part I, General Recommendations 22 and 23).
- (b) Following the above principles, non-exemption should also apply to coastal vessels of the type and size referred to in submissions by Imperial Oil Limited and Dominion Steel and Coal Corporation Limited (Part I, General Recommendations Nos. 22 and 23).

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

At the time of the Commission's hearing, the seaward limit of the District could not be fixed with certainty. Since 1923, the District By-law had purported to fix the seaward District limit as a line drawn from Swivel Point to McGillivray Point and the waters six miles to the seaward of such line. However, it was realized that this By-law provision had no validity because it was not within the legislative jurisdiction of the Pilotage Authority to fix the District limits. When a new By-law was drafted in 1961 this provision was not retained and the term "District" was defined simply by a general reference to the Governor in Council's Order made pursuant to sec. 324 C.S.A.

This action corrected the legal aspect of the question but doubt remained whether it amended the 1874 description of the District limits which made Sydney a coastal District. The 1885 Order in Council was known to the local authorities but they were uncertain because the Order made no reference to the "Pilotage District of Sydney" but to the "Pilotage District for the Ports of Sydney and North Sydney" (which is, in fact, one and the same). The description contained therein, which was the only legal definition, was in effect from 1884 until superseded in 1964. It reads as follows:

"The limits of which District shall comprise all ports, bays and harbors within an imaginary line drawn between Cranberry Head on the northern side of Sydney Harbor and Low Point on the southern side of said Harbor;..." (Ex. 1535(c)).

That line was well inside the six miles seaward from Swivel Point and McGillivray Point, which under the By-law purportedly formed part of the District and wherein the compulsory payment of dues was supposed to apply.

As stated earlier, after the Commission's hearing in Sydney the legal seaward limit was legally fixed by a new Order from the Governor in Council which amended *pro tanto* the 1885 Order. The new description corresponds to the former By-law description (p. 260).

However, this Order in Council fails to clarify a practical problem on which opinions are divided, i.e., whether the six-mile area is to be calculated

as an arc of six miles from Swivel Point and McGillivray Point or as an imaginary straight line drawn six miles from the first line. No practical problems have arisen but they are possible if, at any time, a rigid attitude is taken on the application of the regulations, e.g., enforcing compulsory pilotage or determining the point up to which the pilots may be compelled to pilot.

In practice, however, the pilots consider the outer whistle-buoy as the District limit. It is situated four and a half miles to seaward of the bell-buoy situated in the middle of the imaginary line from Swivel Point to McGillivray Point.

COMMENTS

It is considered that contention arises because no distinction is made in the regulation, as required by subsec. 349(1)(b) C.S.A., between confined waters which are pilotage waters properly speaking and the expanse of open water included within the limits of a District for the sole purpose of boarding and disembarking (secs. 348, 349 and 363 C.S.A.) (vide Part I, p. 49, first para, p. 208, and p. 250, first para). Before the 1950 amendment (14 Geo. VI c. 26 sec. 18) to subsec. 337(a), 1934 C.S.A. (subsec. 345(a) present C.S.A.), the compulsory system applied only when a ship entered confined waters but the pilots were still within their territorial jurisdiction when they navigated a ship into the open waters of a boarding area. If the compulsory payment of dues remains in effect, or if compulsory pilotage is imposed, the District limits should be revised accordingly and the six-mile expanse of open water should be retained in the District merely as a boarding area, with the pilotage waters properly speaking being limited to the confined waters of the ports of Sydney and North Sydney.

(2) PHYSICAL FEATURES

Sydney Harbour is deep, commodious and easy of access. Some 4 miles from the entrance the navigable channel contracts to half a mile between the Northwest and Southeast Bars, which extend from the shore on either side, and about a mile further south lies Point Edward where the harbour divides into the North West Arm and South Arm.

The Port of Sydney comprises the waters of the South Arm within a line from Point Edward to the Southeast Bar, and southward to Sydney Bridge at the head of the Arm. Opposite Sydney across the South Arm and 2 miles south of Point Edward lies the site of the one time Naval Base of Point Edward, now used by the Canadian Coast Guard College (D.O.T.), where a basin is enclosed by a quay wall 1,075 feet long and a jetty of 800 feet with a depth of 24 feet along its outer face. The Dominion Steel and Coal Corporation complex lies in the northern part of the city where its International Piers are the shipping point for its products and the coal from

the extensive fields in the region. There are several wharves and finger piers, the largest being International Pier No. 4 with a berthing length of 810 feet and a depth of 30 feet alongside. Most piers and wharves can accommodate large vessels; they have railway tracks and modern facilities for rapid discharging and loading. The Sydney Engineering and Dry Dock Company operates marine railways, of which the largest can accommodate a vessel 350 feet in length. The Department of Transport wharf is 794 feet long with a depth alongside of 30 feet.

The District Pilotage Office is also located at Sydney.

North Sydney lies at the entrance to the North West Arm, south of and adjacent to the Northwest Bar and $3\frac{1}{2}$ miles northwesterly from the International Piers at Sydney. It has not the prominence of Sydney as a commercial shipping centre, but is the terminus of the Newfoundland ferries and freight vessels operated by the Canadian National Railways and a shipping point for the coal mines in that vicinity.

There are also several wharves and finger piers, the largest being the New Terminal Wharf 880 feet long (which is being extended) with depths alongside ranging from 19 to 25 feet.

The depth of water in the harbour's fairways ranges from 39 to 54 feet and tides rise 5 and 4 feet during springs and neaps respectively. There are several good anchorages within the harbour and those close to Sydney and North Sydney have depths from 5 to 7 fathoms.

Sydney is a control base for the St. Lawrence River winter shipping operations and the icebreakers based there during that period keep the harbour open throughout the winter. Thus the season of navigation which was generally closed from about the middle of January to the beginning of April is now considered year round, although during occasional periods of heavy ice formation delays do occur until a passage is cleared by the icebreakers.

(3) AIDS TO NAVIGATION

The approach from the open sea to Sydney Harbour presents no navigational difficulties. A light is exhibited at an elevation of 78 feet from a white octagonal tower on Low Point where a fog signal apparatus and radiobeacon are also located. Thence leading range lights in the vicinity of Dixon Point, southwest of Point Edward, guide vessels midway between the Northwest and Southeast Bars. The Bars are marked by lights and buoys and there is also a fog signal apparatus at Southeast Bar. From the turning point for Sydney off Southeast Bar leading lights located at Battery Point lead to the berthing facilities in the harbour.

North Sydney, with a frontage of unobstructed deep water, is situated at the northern end of the North West Arm and its approach from seaward is marked by a buoy and light at Northwest Bar.

At the time of the Commission's hearing in 1963, the pilots stated they were generally satisfied with the aids to navigation, but would have liked the fog signal apparatus at Southeast Bar relocated and improvements made to the Battery Point range marks and lights. The Department of Transport recently informed the Commission that for physical reasons it is not practical to relocate the fog signal apparatus, but that the day marks at the Battery Point Ranges were improved in 1964, and later in 1965 new front and rear towers were established and fitted with fluorescent orange day marks (vide Notices to Mariners, No. 182). Also in 1968, at the request of Canadian National Railways, a new light was established at the end of the breakwater at Northwest Bar for additional guidance for vessels, especially the large ferries that call at North Sydney.

(4) MARITIME TRAFFIC

Traffic in Sydney Harbour may be divided into two categories: vessels bound to and from North Sydney, where the traffic is heaviest, and those bound to and from Sydney.

From North Sydney the Canadian National Railways operate a large passenger-car ferry which makes a daily round trip to Port aux Basques, as well as other vessels engaged in Newfoundland services which arrive and depart daily. There are also fishing vessels, occasional ocean freighters, coastal vessels and small bulk carriers.

The main traffic at Sydney consists of large and small bulk carriers for the carriage of ore, coal and oil, ocean freighters, coastal and fishing vessels. Pilot A. M. Huntley stated in his evidence that the larger vessels are double the size of those in earlier years. However, recently traffic at Sydney has rapidly declined as shown by the following shipping statistics of vessels of 250 N.R.T. and over provided by the Dominion Bureau of Statistics, for the years 1962 to 1967 inclusive (Ex. 1483).

SYDNEY

Year	No. of Arrivals	Registered Net Tons	Total Cargo Handled (Tons)	
			Foreign	Coastwise
1962.....	463	1,500,931	638,391	2,648,709
1963.....	439	1,514,553	963,830	2,208,346
1964.....	409	1,595,774	998,644	2,360,421
1965.....	444	1,306,146	939,270	1,712,761
1966.....	306	1,540,172	1,067,612	2,205,180
1967.....	182	1,107,927	715,412	1,633,445
1968*	113	592,016	577,319	665,270

*First semester

The rapid decrease in traffic for the years 1966 and 1967 reflects the decline in operational activities of the Dominion Steel and Coal Corporation. The statistics for the first semester of 1968 were added to show the slight upward trend in shipping due to resurgence in the operations of this firm since it became a provincial Crown Corporation.

NORTH SYDNEY

Year	No. of Arrivals	Registered Net Tons	Total Cargo Handled (Tons)	
			Foreign	Coastwise
1962.....	841	1,614,379	4,876	311,962
1963.....	980	1,679,907	4,397	348,185
1964.....	944	1,708,387	8,228	370,650
1965.....	931	2,548,184	9,913	394,967
1966.....	1,081	3,162,147	11,282	434,562
1967.....	1,050	3,489,264	9,067	395,541

The increased activities of the services provided by the Canadian National Railways, including the ferry service, are reflected in the increased traffic for the years 1966 and 1967.

2. NATURE OF PILOTAGE

Navigation in the confined waters of the District presents no unusual difficulty that requires special local knowledge. Pilotage is required mainly for the convenience of Masters who are not familiar with the local waters and conditions in order to expedite traffic.

Safety of navigation was not considered when the compulsory payment of dues was imposed to such a drastic extent. The governing factor was not to make all users of the port contribute to the maintenance of an efficient pilotage service, but rather to provide adequate remuneration for a number of pilots far in excess of actual requirements, whose numbers could not be reduced other than by normal attrition on account of the security of tenure afforded by the Canada Shipping Act to the holders of permanent pilots' licences.

Since the end of World War II the excessive number of pilots above requirements has been the Pilotage Authority's main problem.

Apart from the Canadian National ferry and steamship services with Newfoundland, the District almost wholly serves local requirements and, therefore, is directly affected by fluctuations in the regional economy. Under normal conditions a small number of pilots could provide and maintain an adequate service.

During the war, Sydney, as a convoy port, required a large number of pilots. At Halifax, similar increased requirements were met by the appointment of temporary pilots whose services were dispensed with at the end of the war. The situation in Sydney, however, was not the same because the pilots were almost at their peak strength when war broke out. In 1937/38, their number increased from 15 to 19, due, no doubt, to increased local industrial activities. The new demand for pilotage service, brought about by the war-time rôle of the port, was partially offset by the decreased local demand, with the result that the peak strength reached in 1941/42 amounted to only 21 pilots.

At the end of the war, the loss of the wartime demand was not compensated by an expected increase in local shipping activities thus creating serious financial difficulties for the pilots (vide Slocombe Survey, p. 268). The situation did not improve but became worse with the decreasing industrial activities of the local coal and steel industry. Another factor which has adversely affected the demand was the trend to large ships. For example, in 1964 and 1965 two large bulk carriers especially constructed for the carriage of coal entered into regular service between Sydney and province of Ontario ports and replaced a number of smaller, slower ships. The *Cape Breton Miner* was commissioned in 1964, gross tonnage 18,809, net tonnage 11,547, length 657 feet, breadth 75 feet 3 inches. The *Ontario Power* went into service in 1965, gross tonnage 20,624, net tonnage 12,768, length 689.4 feet, breadth 75.2 feet. Both trade regularly during the St. Lawrence Seaway season of navigation.

The withdrawal of exemptions together with an increase in rates had been the method of providing the pilots with an adequate income. Dosco, one of the pilots' principal customers had seen the reduced rates which it had enjoyed with other local industries withdrawn. It complained in its brief that pilotage in Sydney was 40 per cent more expensive than in Halifax. It was undoubtedly because the rates had reached a saturation point that the withdrawal of exemptions was carried to an extreme which required an amendment to the Canada Shipping Act in 1950 (vide p. 270) to impose the compulsory payment of dues on the C.N.R. ferry and other C.N.R. vessels.¹

Following the Commission's hearings, a policy was adopted by the Pilotage Authority which decreased the indirect subsidy derived from the C.N.R. ferry ships by progressively modifying the exemption provisions as the number of pilots was reduced through normal attrition but, at the same time, maintained the prevailing level of remuneration for the remaining pilots. This explains the exemption amendments of 1964 and 1965. In 1966, the still contentious situation was resolved when the remaining nine pilots agreed to become prevailing rate Crown employees, effective October

¹ This incongruous solution had unexpected and totally unwarranted results at the Newfoundland terminal of the ferry service at Port aux Basques, a situation which the C.N.R. denounced in their brief to the Commission.

1, 1966. The By-law provisions affecting statutory exemptions were abrogated, thus fully restoring the relative statutory exemptions and releasing, *inter alia*, the C.N.R. vessels, both ferry and coastal, from the compulsory payment of dues. At the same time, small foreign ships under 250 NRT were granted full exemption (vide p. 263). Despite this, a large number of the remaining vessels subject to the compulsory payment of dues dispensed with pilots in 1967, although they had to pay full rates.

The following table shows the amounts which the C.N.R. alone was compelled to pay from 1959 to 1967 and which accrued to the Pilotage Fund without pilotage services being rendered, together with the percentage of these amounts in relation to the total District earnings (Ex. 402):

1959	\$48,638.10	35.4%
1960	55,821.52	40.1
1961	52,712.20	40.1
1962	49,130.82	40.8
1963	44,359.38	36.3
1964	28,597.60	28.3
1965	21,539.05	25.9
1966	16,516.00	19.0
1967	Nil	0.0

The following table details how the Sydney pilots were employed 1962-1967 and the number of times non-exempt ships dispensed with pilots despite the fact that they had to pay full or part dues:

BREAKDOWN OF SHIPS WITH/WITHOUT PILOTS 1962-1967

Year	Trips				Movages			
	With Pilots	Without Pilots	Total	% Without Pilots	With Pilots	Without Pilots	Total	% Without Pilots
1962.....	1,080	793	1,873	42.3	199	36	235	15.3
1963.....	875	896	1,771	50.6	239	54	293	18.4
1964.....	766	949	1,715	55.3	180	51	231	22.1
1965.....	584	1,301	1,885	69.0	144	69	213	32.4
1966.....	602	1,634	2,236	73.1	96	105	201	52.2
1967.....	335	133	468	28.4	51	3	54	5.6

SOURCE: EX. 1535(j).

The table reveals an alarming situation. For instance, in 1966, non-exempt vessels dispensed with pilots on 73.1 per cent of their trips and more would doubtless have done so but for the obligation to pay dues. Despite the re-establishment of all relative statutory exemptions, 28.4% still dispensed with pilots in 1967.

The table also clearly indicates how the pilotage service depends on the local economy: the aggregate number of trips where pilots were employed decreased from 1962 to 1967 by 69 per cent. (Vide also Appendix A.)

At the Commission's hearings no argument was presented in favour of compulsory pilotage, but it was stated that a pilotage service was necessary and the pilots were praised for their efficiency and cooperation. It was noted that they rendered valuable accessory services such as checking buoys or changes in harbour depths and providing information on local wharves, depths and accommodation.

3. ORGANIZATION

Since the Minister of Transport is the Pilotage Authority, administrative directions come from Ottawa and local administration is attended to by an employee of the Department of Transport, the Supervisor of Pilots, who also acts as Supervisor for the Bras d'Or Lakes District, although the two Districts are separately administered. Good relations prevail between the pilots and the Supervisor. At the time of the Commission's hearings, he stated that he seldom had to make a ruling because the pilots abided by their own rules and, in fact, his function was merely clerical. He was assisted by a staff of eight: one stenographer, one clerk and six boatmen employed in the Sydney District.

The Supervisor further stated that he deals with the Pilots' Committee, and rarely with pilots individually, and that meetings are held whenever there is any matter to discuss. The Pilots' Committee was abolished in 1966 when the pilots became Crown employees.

The pilots recommended in their brief that the immediate responsibility for pilotage in Canada be removed from the Department of Transport and transferred to a Pilotage Board directly responsible to the Minister of Transport. While the pilots' relations with the Department were not strained, they felt that the Department did not have time for their problems. They recommended that the proposed Board consist of three members representing the pilots, the shipping interests and the Minister. It was suggested that the pilots' representative be appointed on a rotating basis as the Canadian Merchant Service Guild had previously recommended to the Audette Committee. They complained that there had never been a pilot in the Nautical and Pilotage Division of the Department of Transport. (For the Commission's views on the question of a Pilotage Board, its relationship to the Government and the selection of its members, reference is made to General Recommendation 16, Part I, pp. 502 and ff.)

4. PILOTS

The pilots are not grouped in any association or corporation. As a body, their only representation was through their Pilots' Committee until it was abolished when they became Crown employees. However, they are all members of the Canadian Merchant Service Guild on an individual basis.

(1) RECRUITING AND QUALIFICATIONS

Recruitment and examination procedure are the same as in Saint John and Halifax. Pilot candidates must hold a certificate of competency as second mate of a foreign-going steamship (unlimited as to tonnage) and have served two years as Master or deck officer of a vessel trading regularly into the District.

(2) PILOTS ON STRENGTH

No licence has been issued since 1941 because the pilots have either been up to strength or over strength and, since the demand for pilotage continues to decrease, it is not expected that additional pilots will be required for a number of years, despite the average advanced age of the pilots now licensed.

Sec. 4 of the By-law contained the usual provision regarding the number of pilots, which was to be determined by the Pilotage Authority after consultation with the Pilots' Committee, but it was also deleted in 1966 when the pilots became Crown employees.

In February, 1963, the number of pilots was 13; as of October, 1968, five had retired, reducing their number to eight. Captain F. S. Slocombe stated in 1965 that the practice in previous years had been to renew licences until the pilots reached the age of 70, unless they failed their medical examination, but this practice was discontinued after 1963 in order to reduce their number as quickly as possible with the aim of correcting the incongruous situation created by the withdrawal of relative exemptions (40 per cent of the District revenues were derived from services not rendered). Since 1963, two pilots who had reached the age of 65 had been given a six-month extension and a third a one-year extension. Their retirement date was adjusted to coincide with the gradual abrogation of the compulsory payment of dues by the C.N.R. ferry ships (vide p. 280).

COMMENTS

As long as the Sydney District is to remain a pilotage area where a pilotage service has to be maintained in the public interest, the general criterion for fixing the number of pilots must apply. Since there is no special feature that must be taken into account, the number of pilots should be

sufficient to meet expected peak demands of long duration without serious overwork but, due to the nature of the service, the pilots should expect to be required to work longer hours during occasional peak periods and vessels should also accept occasional short delays if a pilot is not immediately available. In view of the favourable navigational conditions and the comparatively short time periods of pilotage trips, such delays would always be of short duration.

Even if pilotage traffic remains at the present level or shows a marked increase, the present number of pilots and the administrative staff are still much too large. Both should be drastically reduced. For example in 1966, using the workload of the Halifax pilots as a criterion (vide p. 223), three pilots could easily have met the whole demand for pilotage but it was shared by nine pilots. In 1967, the number of assignments performed by two Halifax pilots exceeded by 48 per cent the total workload of the eight Sydney pilots.

The Sydney District is a striking example of the difficult problem posed by an excess number of pilots. Under the present legislation, unless temporary licences have been issued to some pilots, the Pilotage Authority is powerless to reduce numbers except through normal attrition. An unlimited pilot's licence confers security of tenure for its duration, subject to the terms and conditions posed by the valid legislation existing when it was issued. This principle was reaffirmed in a judgment rendered October 1, 1968, by the Supreme Court of Canada in the case of "*Gamache v Minister of Transport et al*" (Ex. 1521(c)).

(Re the right of a pilot holding a permanent licence to obtain a temporary licence until he reaches the age of 70 and the duration of such licence, reference is made to Part I, pp. 266 & 267.)

To provide for compulsory retirement at the age of 65, or between 65 and 70, the Pilotage Authority must first have a provision in its By-law pursuant to subsec. 329(i) C.S.A. and, in the absence of such a provision, it is a right (which he could abandon if he so wishes) for a pilot to obtain annual renewals until he reaches the age of 70. Far from containing such a restricted provision, the District By-law specifically recognizes the right of pilots to such renewals if found medically fit (subsec. 25(5)).

It would appear that, if no restrictive regulation made pursuant to subsec. 329(i) C.S.A. existed when a permanent licence was issued, the licence holder has an acquired right to remain in the service until he reaches the ultimate age limit of 70, provided he meets the physical requirements (sec. 338 C.S.A.). This section should be read in conjunction with subsec. 329(i) and with the context of the Act. Hence, the word "may" means "shall" if at the time the licence was issued the Pilotage Authority had not exercised its discretion in the manner provided in the Act, i.e., through a regulation made under subsec. 329(i).

The fact that the Sydney pilots have become prevailing rate employees does not alter the situation. The terms and conditions of their licence remain governed by Part VI C.S.A. and, although they can no longer remain prevailing rate employees after the age of 65 according to the regulations governing such status, their rights to their pilot's licence are not affected.

The Quebec Pilotage Authority was faced with this problem in 1905 at the time of its reorganization when the Minister took over as Pilotage Authority. The required reduction in numbers was obtained by voluntary retirement, a step the pilots were encouraged to take by the payment out of public funds of accrued pension benefits (Part I, p. 119).

This illustrates the responsibility a Pilotage Authority bears in limiting the number of pilots because, in fully controlled pilotage, the action of issuing a permanent licence binds shipping and the Crown, in fact, if not in law, to guarantee the licensee adequate remuneration for the duration of his tenure.

The situation that has prevailed in this District since the end of the war could have been avoided if a certain number of licences had been issued on a temporary basis, as was done in Halifax. Pilots need security of tenure and retention of the most experienced pilots is to the advantage of the service. One method of attaining these aims would be to divide the establishment into two groups of pilots, one holding permanent licences and the other holding term licences. Promotion to a permanent licence could be integrated with the grade system and based mainly on qualifications and not on seniority alone (vide Part I, p. 270).

(3) PILOTS' STATUS

Since October 1, 1966, the Sydney pilots have changed their status from *de facto* employees to Crown employees under prevailing rates. (Re the propriety of such status, vide the study and comments on the subject in the Halifax District.) The conditions and terms of this new status are studied later.

(4) LEAVE AND HOLIDAYS

In 1963, according to the By-law, the pilots were allowed 21 days annual leave of absence at a time to be determined by the Supervisor. (This was normally the slack period during the winter months.) Subsec. 24(2) made provision for temporary leave of absence for such periods and under such conditions as the Authority determined. This last provision had never been invoked because emergency situations were met unofficially by the pilots arranging among themselves to take turns for others with the Supervisor's knowledge and implicit consent.

In addition to official leaves they enjoyed extensive unofficial leave based on the watch system prevailing at the time. The pilots worked on a week-on week-off routine from spring to December and had at least two

periods of three weeks off during the winter. (Only three pilots were usually kept at the seaward station in winter because there was no requirement for more.)

In addition, sec. 24 provided for sick leave, i.e., six months with full pay, and three additional months with half pay and a further extension without pay up to a total of 36 months. This extension of leave beyond twenty-four months is illegal because sec. 336 C.S.A. provides for the automatic forfeiture of a licence whenever a pilot has not been acting as a pilot for a period of two years.

In case of injury while on duty, sick leave with pay extended for a period of 12 months and for a further 12 months on half pay. The By-law stipulated that, if by then the pilot was still unable to perform his regular duties, consideration was to be given to his retirement.

This situation was completely changed when the pilots became prevailing rate employees. Sec. 24 was deleted in December, 1966, and the pilots are now supposed to be governed by the leave of absence and sick leave provisions as defined in the Prevailing Rate Employees General Regulations. The Treasury Board Minute (T.B. 649126 dated Dec. 15, 1965) which authorized the employment of the pilots as prevailing rate employees (Ex. 1535(i)) gave the pilots credit for past service for the purpose of determining the rate of accumulation of vacation leave under these regulations and deemed each had earned "one-third of the sick leave he would have earned if his employment as a ship's pilot had been continuous employment under the Prevailing Rate Employees General Regulations". (Vide pp. 293 and ff.)

(5) SHIPPING CASUALTIES, INQUIRIES AND DISCIPLINE

In Sydney there have been no problems regarding discipline and there is no record of any pilot even being reprimanded.

During the period 1958-1967 there were 19 "shipping casualties" in which a pilot was involved, all of a minor character. None was found serious enough by the Department of Transport to warrant holding an inquiry under Part VIII of the Act.

Appendix B is a comparative table and brief summary of the 19 shipping casualties and incidents. They are grouped following the method described in Part II of the Report, pages 89 and 90.

The summary in Appendix B merely indicates the reported cause of the accident or incident. In only two cases is the fault attributed to the pilot. However, other causes quoted such as darkness, winds, manoeuvring and bad weather imply a pilot's error because these are conditions a pilot should normally be able to handle. The unimportance of these accidents and incidents did not warrant detailed study of the records to establish the exact circumstances in each case. Some were caused by the added difficulties

resulting from the coal piers which were built many years ago with protruding chutes before ships had the high modern superstructures which create a hazard while berthing.

5. PILOTAGE OPERATIONS

(1) PILOT STATIONS

The pilot station has been closed down since May 1, 1968, and the pilots are despatched by the pilotage office, generally from their homes.

When the Commission sat in Sydney in 1963, there was one pilot station located at Indian Beach, northeast of and adjacent to North Sydney. The building contained a common room, a bathroom, cooking facilities and seven private rooms or cubicles for the pilots, and was equipped with a radiotelephone installed by D.O.T. and a land telephone.

At one time, the pilots maintained two stations, one near the seaward boarding area at Swivel Point, the other in Sydney Harbour at the International Pier where two or three pilots were on duty to deal with movages and outbound trips (vide p. 269).

When it was suggested in 1962 that the North Sydney station be abolished, the pilots objected, but the proposal was implemented in 1968 after the pilots became Crown employees and it was realized that the decreasing demand for pilotage services did not justify the expense of maintaining the station, which, like the other operating costs of the District, was borne by the Federal Government.

(2) BOARDING AREA

Most inbound ships are boarded anywhere between the fairway buoy off Swivel Point and the outer whistle-buoy. Occasionally during adverse weather conditions, the pilots have to lead ships into calm waters well inside the District before boarding. They have experienced difficulties boarding in rough seas and disembarking is even more difficult. They pointed out that accommodation ladders are too dangerous and they have to use Jacob's ladders. They complained that some of the ladders carried by ships are badly made and dangerous and urged that ships be obliged to carry an approved Jacob's ladder.

(3) DESPATCHING

Since May 1, 1968, the pilots have been despatched by tour de rôle from the District pilotage office in the Federal Building at Sydney, generally from their homes. During the day the Supervisor is responsible for despatching but advantage is taken of the 24-hour pilot vessel service so that at night and during weekends and holidays the launchman in charge of the pilot vessel assigns the pilots under the authority of the Supervisor.

Up to that time, despatching in Sydney had always been handled by the pilots themselves according to a system they had developed many years before. They were divided into two watches alternating on active duty and standby duty on a weekly basis. One group went on duty on Wednesday at 10 A.M. and remained continuously on duty on a 24-hour basis until the following Wednesday when it was replaced by the other watch. Each man on the active watch performed assignments in rotation according to a strict *tour de rôle*. The rule was that throughout their week of duty all the pilots of the duty watch lived at the North Sydney pilot station.

The pilots attended to despatching in turn. Requests for pilots were received by land telephone or radiotelephone and the pilot vessel was in direct contact by radiotelephone. Generally, the pilots knew of requirements well ahead of time, and, because of their constant availability at the pilot station, needed very little notice. However, in their experience it was impossible to know with any accuracy the exact time coal ships would depart on account of various delays incurred in loading.

Before the ETA system was instituted, the pilots had to maintain a 24-hour lookout all year round but Notices to Mariners now require ships to give a three-hour ETA, although sec. 10 of the By-law merely requires notification "in sufficient time to enable the pilot to meet the vessel". If a ship is to arrive at night, the arrangement is for the D.O.T. radio station to transmit the message to the pilots three hours ahead of time. They have found that ETA's are not always accurate. The pilot vessel has occasionally had to wait three or four hours in the boarding area for the arrival of a vessel and, at times, come back to the station. However, this was not a serious problem.

The first pilot on the duty watch list was in charge of the pilot station until he proceeded to an assignment. He attended to telephone calls until a request for a pilot was received, whereupon he assigned himself. He then made the necessary arrangements for his transportation with the pilot vessel which he contacted by VHF. Before leaving the station he notified the pilot next on turn who then became responsible. At night, he merely put the land telephone beside this pilot's bed. If several ETA's were received before the pilot in charge's departure, he informed the next pilots on turn about their assignments.

However, this procedure was not strictly adhered to during slack periods and the pilots at the bottom of the list could leave the pilot station provided the duty pilot knew where they could be reached by telephone. Occasionally, a pilot missed a turn in which case his next on turn took his assignment exchanging turns with him for that assignment.

Captain Slocombe stated that the pilots had instituted this system of despatching themselves and the Department had seen no reason to interfere as long as ships were properly serviced. In fact, ships have never been delayed. He was of the opinion that fewer pilots would be required if a regular rotation system were in effect instead of the existing system of week on, week off.

The Department of Transport suggested in 1962 that the pilot station be closed, with the result that despatching would have to be done from the pilotage office and would become the responsibility of the Supervisor who would be assisted at night by the launchman in charge of the pilot boat. The Supervisor expressed the opinion that this could not be done and that it would be necessary to adopt the procedure followed in Halifax, i.e., employ four despatchers to maintain a 24-hour service provided by the pilots.

The Department of Transport explained that abolishing the watch system, relieving the pilots of despatching responsibilities and closing down the pilot station were changes warranted by present circumstances and were unrelated to the changeover in the pilots' status. The Department added that when the Government agreed to make the pilots Crown Employees the intention was "to leave the local organization at Sydney undisturbed" (Ex. 1535(n)).

COMMENTS

The changes were realistic and warranted but long overdue. The belated implementation of the 1962 proposal can be accounted for, on one hand, by reluctance on the part of the pilots and shipping to change the organization and routine they were used to and, on the other, unwillingness on the part of the Authority to act unless supported by the pilots' acquiescence.

If pilotage traffic does not improve substantially, additional measures will have to be taken to reduce costs, *inter alia*, by finding a suitable alternative to the disproportionately expensive pilot vessel service. One possibility would be to employ, for the small amount of night despatching that still remains, personnel with other regular duties, e.g., the D.O.T. radio station staff who always play an important rôle in the process in that they receive ETA's and transmit them to the Supervisor during the daytime or to the launchman in charge at night. The only change would be that at night they would call the pilot next on turn according to the list supplied by the Supervisor every twenty four hours. Since advance ETA's are required and night assignments are infrequent, there will be very few calls of this nature.

Since navigation of the District waters does not present serious problems and all the pilots now on strength have had long experience, there is no reason why despatching should not continue according to an automatic tour de rôle until new pilots are licensed. The system should be reviewed at that time.

(4) PILOT VESSEL SERVICE

Two D.O.T. pilot vessels serviced the District until February, 1964, when the smaller vessel *Pilot Boat No. 3*, was transferred to St. John's, Newfoundland. The primary use of the second pilot vessel was to service ships in the inner harbour, but it was also used to return pilots from berths to the pilot station and made occasional trips to the boarding area, although it was not suitable for this latter purpose.

Since February, 1964, service has been provided by only one pilot vessel. Before the change was made, the Sydney pilots, like the Halifax pilots, had argued that two vessels were necessary because they were often in use simultaneously; the second vessel was available when the other broke down and private vessels that might be hired were most unsatisfactory. They were also concerned about delays in connection with land transportation.

During the Ottawa hearings in June, 1964, Pilot D. F. Ryan conceded that one pilot vessel had proved sufficient noting, however, that traffic had decreased. Captain F. S. Slocombe stated that the change was working out well as far as the Department was aware. Among the reasons for the change was the fact that the pilot vessel crew claimed they were working too hard when there were two vessels. Since it was difficult to cover the crews by the prevailing rate regulations and the Department was not permitted to increase staff, they were all assigned to one pilot vessel, thus reducing their hours on duty. Furthermore, the second pilot vessel was needed in St. John's.

The remaining pilot vessel is used to transport pilots across the harbour whenever necessary rather than incur the expense and delay involved in having them proceed around the harbour by land. Pilots who live in Sydney have been allowed taxi fare when proceeding to or from the Dominion Steel and Coal Corporation wharf (Ex. 1535(n)).

In addition to its use for pilotage service, the pilot vessel was used occasionally, perhaps ten times a year, to assist Customs or Immigration officers or the District Marine Agent to service buoys, but this occurred only when the vessel was not engaged on pilotage duties.

On October 9, 1967, the former *Canada Pilot No. 4* was replaced by a new vessel bearing the same name built at a cost of approximately \$273,000. Her particulars are:

Length	57'3"
Breadth	15'3"
Depth	7'4½"
Propulsion Unit	Cummins Diesel—302 h.p.
Equipment	VHF, MF & HF radios and radar.

The vessel is operated by a crew of two: one launchman, who is required to hold a certificate entitling him to take charge of a passenger vessel under four tons gross tonnage, and one deckhand. In order to provide 24-hour service,

six launchman and deckhands are employed. In addition, a Supervisor of boat machinery was engaged when this vessel was built. He does not serve as a member of the crew but supervises the maintenance of her engines and machinery.

This vessel was transferred to Halifax on June 8, 1968, to replace *Canada Pilot No. 6* which was transferred to Sydney. At the same time, the Supervisor of boat machinery was also transferred to Halifax with the result that the total complement of pilot vessel crew at Sydney remains at six, while at Halifax it has been increased to 10.

There was only one pilot vessel on duty in Sydney throughout 1967. One vessel was fully capable of meeting the requirements of the service in 1964 and, with the sharp decrease in the traffic that has taken place since, one vessel can effectively handle a considerably greater demand (Ex. 1535 (m)).

In 1965, the cost of the pilot vessel service, both to the Crown and shipping, amounted to \$51,270 and accounted for 32 per cent of the total cost of the pilotage service in the District (vide Part I, p. 639). In 1967, this percentage was much higher as a result of the discontinuation of the indirect subsidies received from the C.N.R. vessels, which were shown in the form of unearned pilotage dues, and, hence, part of the cost to shipping. The pilot vessel service in 1967 cost the Government \$50,900, not counting depreciation of the vessel and material (Ex. 1535(m)). It is evident that this expense is disproportionate in comparison to the total pilotage earnings of the District in that year, which amounted to only \$36,997.62, including \$3,320 for pilot boat charges (Ex. 386).

COMMENTS

It is considered that such an expensive pilot vessel service can no longer be justified in view of the steady decrease in pilotage traffic since 1962. The average daily use of the pilot vessel (less than twice a day in 1965 and 1966 and once a day in 1967) does not warrant keeping it manned on a 24-hour basis.

Unless there are reasonable grounds to believe that there will be a substantially increased demand for pilotage in the near future, an alternative solution should be sought to provide pilot vessel service. In 1967, the average cost for each use that was made of the pilot vessel amounted to over \$150, not counting depreciation of the vessel and equipment. The main item of expenditure is the aggregate amount of the wages and allowances for the six crew members required to provide 24-hour service.

In view of the fact that the small number of demands for pilotage can be ascertained well in advance, there should be a reduced pilot vessel crew on 24-hour standby duty like the pilots. If this is not permissible under existing legislation, appropriate provisions should be included in the new

Pilotage Act to make such arrangements possible. It seems reasonable that accessory pilotage services should be governed by pilotage legislation so that their organization can be adapted to the needs and circumstances of each locality.

An alternative would be to adopt the system that prevails at Bras d'Or Lakes, Churchill, Quebec and outports on the B.C. Coast, i.e., to take advantage of local transport facilities.

Furthermore, in order to reduce requirements for pilot vessel service, the limit of the boarding area might well be brought nearer the harbour entrance, as occurs in adverse conditions when an incoming vessel is required to proceed into sheltered water to embark a pilot. If this can be done under such conditions, there appears to be no reason why it can not become the general practice. Since the channel at the entrance to the harbour is wide and clear of obstructions, additional aids to navigation (if necessary) should obviate any serious difficulty in implementing this proposal.

(5) WORKLOAD

The pilots have been over strength since the end of World War II. Since the present legislation did not permit an adjustment in numbers commensurate with the actual demand for pilotage, except by the slow process of normal attrition, despite the fact that assignments diminished substantially in the last few years, there was no necessity to determine the actual workload of the pilots until they became prevailing rate employees.

Therefore, under the present circumstances, this Report does not require an exhaustive study of the question. A sufficiently accurate picture of their workload can readily be established with the evidence given at the Commission's hearing and the information contained in the statistical data furnished.

The following table shows the workload per establishment pilot for the years 1965, 1966 and 1967. To calculate the workload per week and per day it has been assumed that the pilots were on holiday and leave for one-third of the year. Assignments mean trips and movages performed by pilots.

Year	Total Assignments	Establishment Pilots	Average Number of Assignments per Establishment Pilot on Active Duty		
			Per Year	Per Week	Per Day
1965.....	728	9.4	77.5	2.2	0.32
1966.....	698	8.9	78.4	2.3	0.32
1967.....	386	8.0	48.3	1.4	0.20

According to the above assignment figures, each pilot averaged less than one hour of duty time per day of active duty and not more than seven hours per week. In 1967, the average travelling time and actual piloting amounted to 36 minutes per day.

According to the evidence adduced before the Commission, three hours is the average time for a pilotage assignment (trip or movage) from the time a pilot boards the pilot vessel or the ship to be piloted to the time he disembarks. About three-quarters of an hour is spent on board the pilot vessel, provided the ship is on time. If the incoming ship is not familiar with the port, the pilot embarks at the fairway buoy, which the pilot vessel takes about an hour to reach, but regular traders are met much farther inside the District limits, in which case only half an hour is spent in the pilot vessel.

Normally it takes an hour and a half to pilot a vessel from the fairway buoy to the International Pier and berth her but in adverse weather conditions during the winter it may take from five to twelve hours. On one occasion a pilot was overcarried to Halifax due to a gale force blizzard.

Up to 1968, the pilots attended in turn to what little despatching was required, but the pilotage office staff now performs these duties, thus restricting the pilots' workload to their assignments.

6. PILOTS' REMUNERATION AND TARIFF

The amount the pilots are paid has not been dependent upon District earnings (hence upon the tariff) since October 1, 1966, when they became prevailing rate employees of the Department of Transport.

(1) PILOTS' REMUNERATION

Up to Oct. 1, 1966, the pilots' remuneration was a share of the pilotage earnings of the District on the basis of availability for duty. As in Saint John, N.B., the dues collected were shared at the end of each month.

However, although the By-law required full sharing at the end of the month and there was no problem of financing the shares (since they were derived from dues collected and not as earned), a sizable amount was always left undistributed, e.g., the balance brought forward Jan. 1, 1965, was \$17,709.43. There was no valid reason why full sharing was not effected at the end of each month, thereby bringing the bank account to nil, since all the operating expenses of both the District and the service were assumed by the Department of Transport and all pilotage dues (except pilot boat charges) belonged to the pilots and were, in fact, eventually paid in full either to them or on their behalf. The only possible explanations are that this practice was a relic of the period when the operating expenses had to be paid or financed out of the pilotage dues, or that it was a way of prorating the pilots' remuneration in order to ensure regular salaries in months when there was

little to share. This, however, was not a valid reason for departing from the rules established by the By-law. The pilots as mature men should have been able to solve their own financial problems. If it was known that the amount of their share was likely to vary substantially from month to month, it should have been left to them to foresee the consequences and the Pilotage Authority had no right to deprive any of them of the full share to which he was entitled in any given month.

Since pilotage dues (except pilot boat charges) are the pilots' earnings, the only deductions made before sharing were the compulsory contribution to the Pension Fund, which was quite substantial, and the pilots' own group expenses.

The pilots' remuneration when they became prevailing rate employees was fixed at \$800 per month on an annual basis by the Treasury Board Order authorizing their employment as such (T.B. 649126 of Mar. 17, 1966, Ex. 1535(i)). As of December, 1968, this basic remuneration had not been changed. According to the Prevailing Rate Employees General Regulations, such employees are entitled to extra remuneration for overtime, standby time, work on rest days and work on statutory holidays but none of the pilots has drawn any such extra remuneration. However, entitlement to such extra remuneration can not be established because the "work day" and the "work week" have not been defined as required by these regulations (Ex. 1535(k)).

The Prevailing Rate Employees General Regulations, 1963, as amended, apply *in toto* to the Sydney pilots because none of these provisions was declared inapplicable to them by Treasury Board as required under subsec. 2(3) (as was specifically done in the case of the Port Weller-Sarnia pilots in Treasury Board Minute T.B. 652402 of the same date, March 17, 1966, (Ex. 1362) which excepted secs. 8, 9 and 10). According to these regulations, the Sydney pilots are entitled to extra remuneration, e.g., because they are on standby duty 24-hours a day (except when they are on leave of absence), a service requirement which should not be interfered with, or because on occasional assignments they work longer hours than a normal work day.

The fact that in the submission, which became the Treasury Board Order when approved, in the paragraph titled *Remarks* a general mention was made of the application of the Prevailing Rate Employees General Regulations to the Port Weller-Sarnia pilots without any reference to any order does not make the conditions and terms governing the employment of the Port Weller-Sarnia pilots part of the Sydney submission. A specific mention to that effect would have been required. This part of the submission reads as follows:

"REMARKS: Subsequent to the appointment of the pilots in the Port Weller-Sarnia area under the Prevailing Rate Employees General Regulations, this type of employment was made available to other pilotage districts. Recently, the pilots in the Sydney, N.S. District approached the Department for a firm offer of

employment. Under this arrangement revenues are credited to the Receiver-General of Canada and expenditures are charged to the appropriate vote approved on the basis of earlier estimates."

A more serious argument could be drawn from the paragraph entitled *Cost* which reads as follows:

"Cost: Approximately \$86,400. (Rate of \$800. per month recommended by Department of Labour, letter attached.)"

This letter dated Oct. 8, 1965, which was addressed to the Deputy Minister of Transport from the Director of Labour Standards Branch, reads:

"In compliance with a request received from your Department on September 30, the rate of \$800 per month is recommended for payment to ships' pilots in the Sydney, N.S., pilotage district.

The above rate includes remuneration for all necessary overtime."

This last qualification does not appear anywhere in the submission.

The *Proposal* is clear: "To establish nine prevailing rate positions of ships' pilot at a recommended rate of \$800. per month". This rate per month should be interpreted in the light of the Regulations, that is, subject to extra remuneration for standby time, overtime and time worked during days of rest or statutory holidays. The fact that the reference to the letter of the Director of Labour Standards Branch is between brackets would indicate that it was not intended that its contents should become part of the proposal. Furthermore, to include in the monthly rate "all necessary overtime" would have amounted to making an exception to the Regulations, and according to the rules of interpretation any doubt should be resolved in favour of the rule. In this case, the manner in which this condition is supposedly expressed creates more than a doubt. In addition, this can not solve the problem of calculating annual leave and sick leave credits. The only method provided in these Regulations for computing these benefits is on the basis of hours a pilot is supposed to work per day and per week.

It is obvious that if these regulations were applied to the Sydney pilots a preposterous situation would result, because they were not devised for a group of persons working irregular hours and being on standby on a 24-hour basis every day of the week. The only permissible way to handle this situation under the Prevailing Rate Employees General Regulations would have been to have *ad hoc* regulations enacted for the Sydney pilots by Treasury Board. (For comments on the applicability of this system to pilots, vide pp. 210 and ff.)

The following table shows from 1959/60 to 1967 inclusive the gross pilotage earnings of the District (excluding pilot boat charges) on an earned basis; the average establishment of pilots for the year; the average "take home pay" per establishment pilot based on the aggregate amount of the shares or salaries actually paid to the pilots that year; the share of the District pilotage earnings (excluding pilot boat charges) earned during that year being the amount paid to or on behalf of each pilot, i.e., including "take

home pay", pension contributions and group expenses; and for the years 1961 to 1965 and estimated for 1967 each establishment pilot's share of the total cost of the District, which includes indirect subsidies.

Year	Gross Pilotage Dues Earned	Average Pilots' Establishment	Average Share per Establishment Pilot		
			"Take Home Pay" (Actual)*	Pilotage Dues Earned*	District Total Cost**
	\$		\$	\$	\$
1959/60	137,354.70	14.0	8,056.95	9,811.05	—
1960	139,050.99	14.0	8,556.95	9,932.21	—
1961	131,361.55	13.6	8,576.53	9,658.94	14,333.24
1962	120,345.44	13.0	7,800.00	9,257.34	14,318.85
1963	122,099.14	12.4	8,229.93	9,846.70	15,386.21
1964	100,944.80	10.2	8,418.88	9,896.55	16,623.04
1965	83,148.85	9.4	7,873.86	8,845.62	16,799.89
1966	86,809.50	8.9	9,535.65	9,753.88	—
1967	33,677.62	8.0	9,600.00	4,209.70	(19,200.00)

SOURCES:

*District Annual Reports, Exs. 386 to 389.

**For 1961-65 vide Part I, App. IX, pp. 639-641; the 1967 figure is a conservative assumption, the 1965 figure being taken for the item "Cost of Administration".

Up to 1966, the gradual decrease in earnings was due to two main causes, first a decline in traffic and second, the gradual exemptions applied to the C.N.R. ferries during the years 1964 to 1966. The steep decrease in 1967² is also due to two causes, i.e., the continuing decline in traffic, brought about by the economic situation in the areas, and the full reinstatement of statutory exemptions, whereby coastal and local trading vessels of dominion registry were granted total exemption.

Despite the foregoing, the pilots' "take home pay" remained fairly constant due to the fact that exemptions were reintroduced to coincide with the reduction in the pilots' strength (vide App. A). It increased in 1966 partly due to an increase in traffic but mostly because the pilots received a fixed salary of \$800 per month for the last three months of that year. In 1967, the pilots received their highest remuneration in ten years, despite the considerably reduced earnings of the District, because by then they were on a straight salary of \$9,600 per year. The resultant deficit, estimated at \$116,800, is borne by the Government.

The fact that the District is heavily subsidized accounts for the large share per pilot of the District total cost. The figures shown here are only for the five years covered in the Report of the Commission's accounting consultants (Part I, App. IX).

² In round figures the 1967 earnings, including boat charges, were \$37,000. Expenses were \$76,800 in pilots' salaries, \$50,900 for the pilot vessel service, and administration costs estimated at the 1965 figure of \$26,100, a total of \$153,800. The operational deficit paid by the Government was \$116,800.

(2) TARIFF

The tariff structure is the same as in Halifax and the By-law provisions on the subject are almost verbatim, except for the rates. In Sydney, these are slightly higher on all items with the exception of the basic rates which are substantially higher. As in Halifax, the basic rate for inward and outward trips takes the form of a scale but it provides a specific rate for each 50 tons after the first 100 tons up to 1,000, above which a constant price of \$1.68 is added per additional 100 NRT (compare p. 232).

Dominion Steel and Coal Corporation Limited in its brief complained that the rates for pilotage voyages in Sydney averaged 40 per cent higher than in Halifax. The obvious reason was that, due to the excessive number of pilots, the District had to exploit to the maximum all possible sources of revenue, partly by raising the rates, partly by withdrawing the statutory exemptions beyond all reasonable limits, and partly by indirect subsidies.

As far as Dosco is concerned, the situation has now been remedied because its ships engaged in coastal and home trade have enjoyed full exemption since December 9, 1966.

If pilotage is to continue to be fully controlled by the Pilotage Authority until the number of pilots on strength is reduced to those required to meet the demand, the service will have to be heavily subsidized for some time to come.

Contrary to the practice in other Districts, the annual financial statement of the Pilotage Authority gives only the aggregate of dues earned and collected during the calendar year without itemized details. Since the pilots' actual remuneration is no longer dependent upon the tariff and the District earnings, it was not considered necessary to study the percentage of the aggregate earnings each tariff item comprises. The statistics in this Section, especially Appendix A(2), provide a sufficiently accurate approximation.

COMMENTS

The normal process of fixing the amount of various rates, i.e., so that the aggregate amount they yield meets the estimated cost of the service (Part I, C.6), does not apply in Sydney because the resulting rates would be prohibitively high. In this case, at least until the number of pilots is reduced to a reasonable level, the criterion should be a scale of rates comparable to those charged for similar services in other Districts.

As noted when the Halifax system was discussed (p. 233) it is considered that a more rational rate structure should be adopted, namely, a rate per ton of maximum gross tonnage over a certain minimum. In this case, the minimum should be low because the pilots have few assignments.

7. FINANCIAL ADMINISTRATION

Up to October 1, 1966, as in most other Districts, three funds were kept at Sydney, i.e., the Pilotage Fund, Pension Fund, and Welfare Fund. The Pension Fund will be dealt with later.

The Welfare Fund is a private fund subscribed by the pilots and placed at the disposal of the Pilots' Committee to finance various collective expenses. It is made up of individual pilot's contributions (at the rate of \$8 per month per pilot in 1963) out of which the pilots pay their annual dues to the Canadian Merchant Service Guild and such other expenses as flowers, Christmas cards and gifts. The bookkeeping is attended to by the pilotage office accountant for a small remuneration. The Pilotage Authority is not concerned with this Fund.

According to the General By-law of the District, all receipts that came into the hands of the Pilotage Authority before Oct. 1, 1966, comprised the District Pilotage Fund. The annual financial statement appeared to be a true picture of the Fund, although only items of receipt and expenditure that concerned pilotage earnings in the pool appeared in the financial statements examined by the Commission, i.e., from 1959/60 to Sept. 30, 1966.

Furthermore, these statements, contrary to the situation in Halifax, are true financial statements made on the basis of assets and disbursements, cash receipts and expenditures, and there is continuity from one statement to the next. Disbursements show the total amount paid to the pilots, i.e., their "take home pay", the boat charges paid to the Receiver General, amounts paid on behalf of the pilots, i.e., their compulsory Pension Fund contributions and their group expenses, and, finally, the unspent balance on hand at the end of the year.

Among the pilots' group expenses were premiums for medical and hospital group insurances, the expenses of the Pilots' Committee and the cost of sending representatives to the Canadian Merchant Service Guild convention.

The Pilotage Fund and its governing By-law provisions were abolished effective Oct. 1, 1966, i.e., when the pilots became Crown employees, since when they ceased to have any vested interest in the District earnings. From that date the annual financial reports that the Pilotage Authority had always furnished were also discontinued.

The General By-law as it now reads provides that both the pilotage dues and the statutory indemnities of secs. 359 and 360 C.S.A. are payable to the Pilotage Authority through the local Supervisor to be deposited *in toto* to the credit of the Receiver General of Canada (By-law, secs. 8 and 9 as amended by P.C. 1966-2313 of Dec. 9, 1966).

The provision regarding statutory indemnities is *ultra vires* since this is not a matter within the Pilotage Authority's regulation-making power. It is true that the pilots' entitlement to these indemnities is incompatible with their status as Crown employees, but this is so because this status is incompatible with the present statutory pilotage legislation contained in Part VI of the Act.

The same remark applies to title to pilotage dues. Part VI makes it permissible, and even advisable, that they be made payable to the Pilotage Authority, and there is no objection if they are deposited with the Receiver General in trust for the pilots who earned them (*vide* Part I, C.5). An amendment to the Act is required to change or authorize the Pilotage Authority to alter title to pilotage dues.

With the disappearance of the pool the pilots have lost a method of covering their group expenses. However, these are now greatly diminished since each individual pilot now benefits from, or may participate in, the group protection plans provided by the Government to its employees and which advantageously replace the various group insurance policies they had to take out previously for their own protection. The remaining group expenses will have to come from the Pilots' own Welfare Fund. If the pilots as a group were a corporation, as they will be if the Commission's General Recommendation No. 25 (Part I, p. 549) is acted upon, the corporation fund would, *inter alia*, serve this purpose.

In view of the fact that financial statements are no longer prepared, and also because of the many changes that have occurred, it would serve no useful purpose to review the financial situation in detail.

COMMENTS

The foregoing indicates that the change in the pilots' status has made it more difficult than ever to distinguish between the functions of the Pilotage Authority and the Minister of Transport and has resulted in more complete centralization. This state of affairs is in conflict with the Commission's General Recommendation No. 15 (Part I, p. 499). When the pilots have to be Crown employees, they should be employees of their Pilotage Authority (pp. 210-213), each District should be a separate accounting unit where the pilots' salaries form part of the District operating expenses, budget and financial statements should be furnished and a uniform accounting procedure should be defined by the proposed Central Authority through Pilotage Orders (Gen. Recs. Nos. 16 to 21).

8. PENSION FUND

The Sydney Pension Fund ceased to exist when the pilots became Crown employees.

This Fund had been solvent for a number of years, mainly on account of the sizable contributions the pilots were required to pay (they were increased Aug. 1, 1954, to 16 per cent and lowered to 12 per cent Jan. 31, 1966). The actuarial evaluation carried out by the Commission's consultants showed a surplus of \$81,890 December 31, 1963 (vide Part I, C. 10, and App. XII).

One of the terms and conditions of the pilots' agreement to become Crown employees was that recognition be given for superannuation purposes to their past service as pilots. Furthermore, the existing Sydney Pension Fund no longer had to be maintained, except to meet the pension benefits then accrued when they became due.

The solution adopted was that, in consideration of the transfer to the Crown of the Fund assets, the Crown assumed the liabilities of the Fund toward the pensioners, and retroactivity was given the active pilots for pension benefits under the Public Service Superannuation Act in proportion to both past service and the extent of individual contributions to the District Fund.

Since this was not permissible under the present statute, an Act of Parliament was necessary. The same legislative procedure was followed as adopted for the transfer of the British Columbia Pension Fund in 1966 (Part II, p. 193), i.e., through the device of an *ad hoc* provision in an Appropriation Act. By Appropriation Act No. 9, 1966 (14-15 Eliz. II c. 55) a sum of \$1 was voted for the purpose of giving effect to the agreement. Vote No. 8c of the Department of Transport under Schedule D reads as follows:

"8c Subject to such terms and conditions as the Governor in Council may prescribe, to authorize the transfer of the assets of the Sydney Pilots' Pension Fund to the Superannuation Account under the Public Service Superannuation Act, to deem that all licensed pilots of the Sydney Pilotage District who became employed in the Public Service on the first day of October, 1966 are required by subsection (1) of section 4 of the Public Service Superannuation Act to contribute to the Superannuation Account as of that date, to authorize the counting as pensionable service for the purposes of the Public Service Superannuation Act the service of such licensed pilots with the Sydney Pilotage District and to authorize the payment out of the Superannuation Account of any pensions which, prior to the transfer of assets were paid out of the Sydney Pilots' Pension Fund."

On Jan. 19, 1967, the Governor in Council made the necessary regulations entitled "Sydney Pilots Pension Regulations" (P.C. 1967-114). In *résumé*, these regulations provide for:

- (a) the transfer from the Pilotage Authority to the Superannuation Account of the Government through the Minister of Finance of all the assets of the District Pension Fund;

- (b) making the Crown Superannuation Account responsible for the payment of the pension benefits acquired under the District Pension Fund;
- (c) making each active pilot a contributor under the Public Service Superannuation Act and devising the method of computing the retroactivity of superannuation benefits for past service and contributions to the former Pension Fund.

During that time, the Sydney Pilotage Authority by an amendment to its By-law dated Dec. 9, 1966 (P.C. 1966-2313) revoked Part II of its By-law which dealt with its Pension Fund and also the other provisions which fixed the compulsory contribution, thereby abrogating the Pension Fund.

For the Commission's comments on Pension Funds, vide Part I, C. 10, and on the disposition of the Sydney Pension Fund, vide Part I, page 583.

Chapter D

The Recommendations for the Pilotage District of Sydney are included in Subsection III which deals with the whole Cape Breton area.

Chapter E

APPENDICES

APPENDIX A

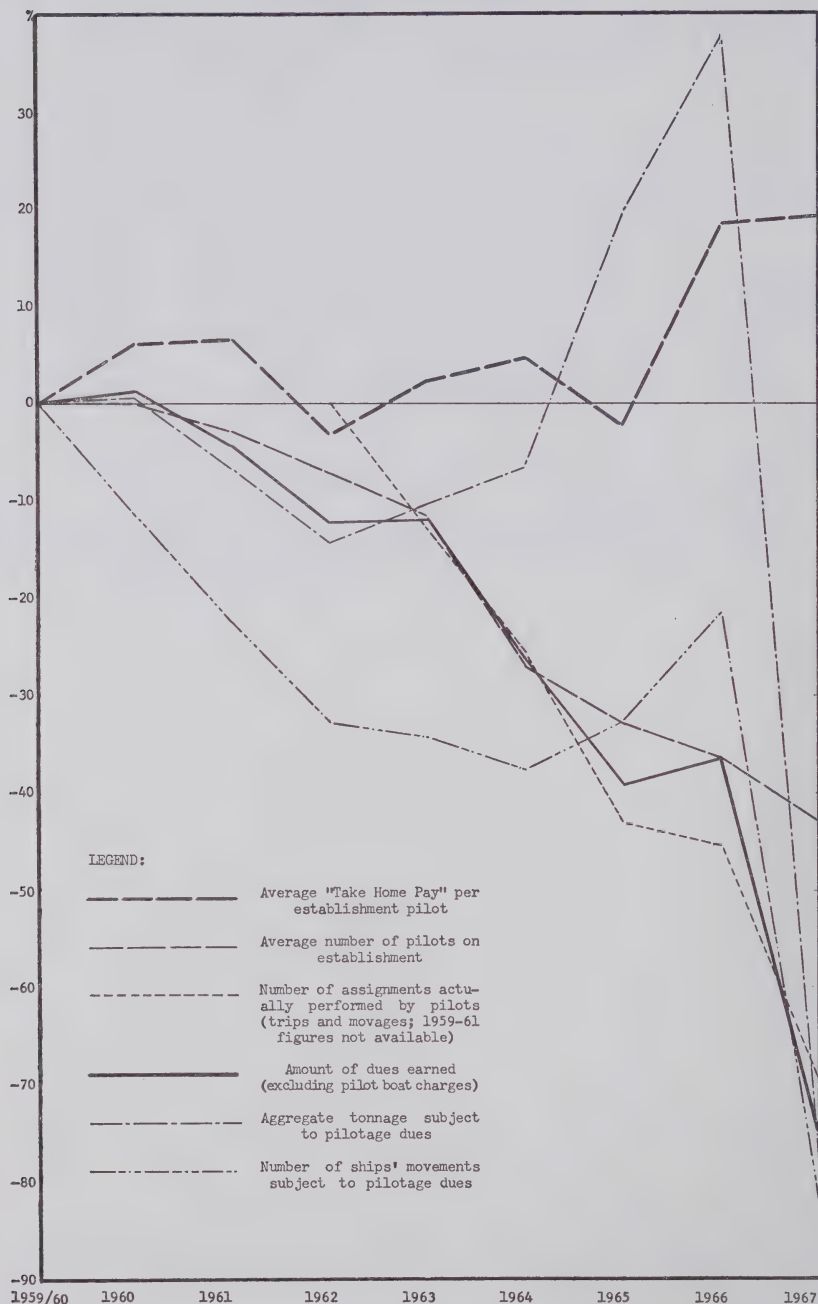
- (1) Graph—Per cent Increase or Decrease in Earnings and Workload of Pilots in the Pilotage District of Sydney, N.S.
- (2) Table—Earnings and Workload of Pilots in the Pilotage District of Sydney, N.S.

APPENDIX B

- (1) Table—Shipping Casualties, Accidents and Incidents involving Pilots of the Pilotage District of Sydney, N.S.
- (2) Index—Summary of Shipping Casualties, Accidents and Incidents involving Pilots of the Pilotage District of Sydney, N.S., during the Ten-year Period 1958–1967.

Appendix A (1)

PER CENT INCREASE OR DECREASE IN EARNINGS AND WORKLOAD OF PILOTS IN THE PILOTAGE DISTRICT OF SYDNEY



Appendix A (2)

EARNINGS AND WORKLOAD OF PILOTS
IN THE PILOTAGE DISTRICT OF SYDNEY, N.S.

Year	Number of Ships' Movements Subject to Pilotage Dues ^a	Aggregate Tonnage Subject to Pilotage Dues	Amount of Dues Earned (Excluding Pilot Boat Charges)	Number of Assignments Actually Performed by Pilots ^b	Average Establishment ^c of Pilots	Average "Take Home Pay" per Estab- lishment Pilot
1959/60	3,156	6,669,086	\$137,354.70	not available	14.0	\$8,056.95
1960	2,799	6,711,492	\$139,050.99	not available	14.0	\$8,556.95
1961	2,448	6,213,612	\$131,361.55	not available	13.6	\$8,576.53
1962	2,121	5,711,694	\$120,345.44	1,279	13.0	\$7,800.00
1963	2,078	5,989,482	\$122,099.14	1,114	12.4	\$8,229.93
1964	1,965	6,214,466	\$100,944.80	946	10.2	\$8,418.88
1965	2,122	7,982,780	\$ 83,148.85	728	9.4	\$7,873.86
1966	2,485	9,182,655	\$ 86,809.50	698	8.9	\$9,535.65
1967	537	1,391,489	\$ 33,677.62	386	8.0	\$9,600.00

Per Cent Increase or Decrease

1959/60	0.0	0.0	0.0	—	0.0	0.0
1960	-11.3	0.6	1.2	—	0.0	6.2
1961	-22.4	-6.8	-4.4	—	-2.9	6.5
1962	-32.8	-14.4	-12.4	0.0	-7.1	-3.2
1963	-34.2	-10.2	-11.1	-12.9	-11.4	2.2
1964	-37.7	-6.8	-26.5	-26.0	-27.1	4.5
1965	-32.8	19.7	-39.5	-43.1	-32.9	-2.3
1966	-21.3	37.7	-36.8	-45.4	-36.4	18.4
1967	-83.0	-79.1	-75.5	-69.8	-42.9	19.2

SOURCES OF INFORMATION: Exhibits 386-389^b.

^aTotal bills: comprises all assignments, both performed by pilots and subject to compulsory payment system.

^bTrips and movages (vide Exhibit 1535(j)).

^cEstablishment means the number of pilots on a year basis, taking into consideration any increase (i.e., probationary pilots) and any decrease (i.e., retirements) that occurred during the year.

Appendix B (1)

SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS
INVOLVING PILOTS OF THE DISTRICT OF SYDNEY, N.S.

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
A. EVENTS HAPPENING WHILE NAVIGATING:										
I. Major Casualties (with or without loss of life).....	0	0	0	0	0	0	0	0	0	0
II. Minor Casualties (without loss of life).....	0	0	0	0	0	0	0	0	0	0
III. Accidents (without damage to ships).....	0	0	0	0	0	0	0	0	0	0
IV. Incidents (with no damage involved).....	0	0	0	0	0	0	0	0	0	0
B. EVENTS HAPPENING WHILE BERTHING, UNBERTHING OR AT ANCHORAGE:										
I. Major Casualties (with or without loss of life).....	0	0	0	0	0	0	0	0	0	0
II. Minor Casualties:	0	0	0	0	0	0	0	0	0	0
a. Minor standings.....										
i. Minor damage to ship:										
i. Striking pier.....	1	4	1	1	3	1	1	1	0	0
ii. Striking vessel berthing or unberthing.....	0	2	0	0	1	1	0	0	0	0
iii. Striking vessel at anchorage.....	0	0	0	0	0	0	0	0	0	0
iv. Others.....	0	1	0	1	0	4	0	1	0	0
III. Accidents (without damage to ships):										
a. Damage to pier.....	0	0	0	0	0	0	0	0	0	0
b. Damage to buoys.....	0	0	0	0	0	0	0	0	0	0
c. Others: damage to cable.....	0	0	0	0	0	1	0	0	0	0
IV. Incidents (with no damage involved):										
a. Striking pier.....	0	0	0	1	0	0	0	0	0	0
b. Striking vessel berthing or unberthing.....	0	0	0	0	0	0	0	0	0	0
c. Striking vessel at anchorage.....	0	0	0	0	0	0	0	0	0	0
d. Striking buoys.....	0	0	0	0	0	0	0	0	0	0
e. Others.....	0	0	0	0	0	0	0	0	0	0
Total Shipping Casualties, Accidents and Incidents.....	1	6	1	2	4	3	1	1	0	0

SOURCES OF INFORMATION: Exhibits 390, 866, 1451 and 1467.

Appendix B (2)

SUMMARY OF SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS INVOLVING PILOTS OF THE PILOTAGE DISTRICT OF SYDNEY, N.S.

During the Ten-Year Period 1958–1967*

A. EVENTS HAPPENING WHILE NAVIGATING: Nil

B. EVENTS HAPPENING WHILE BERTHING, UNBERTHING, OR AT ANCHORAGE:

I. Major Casualties (with or without loss of life): Nil

II. Minor Casualties:

a. Minor strandings: Nil

b. Minor damage to ship:

i. Striking pier:

1. January 1, 1958—*Granada*; cause: darkness.
2. September 3, 1959—*Tramontana*; cause: wrong engine movement.
3. October 5, 1959—*Mapledore*; cause: pilot error.
4. October 31, 1959—*Charlton Mira*; cause: unknown.
5. December 17, 1959—*Georgios A.*; cause: wrong engine movement.
6. September 30, 1960—*Ardglen*; cause: pilot error.
7. November 12, 1961—*Rio Umia*; cause: crew error.
8. June 7, 1962—*Wabana*; cause: winds.
9. August 7, 1962—*Dicoronia*; cause: winds.
10. December 15, 1962—*Gulfport*; cause: winds.
11. September 27, 1963—*Makaweli*; cause: while berthing, vessel fell heavily against government wharf.
12. June 20, 1964—*Charlton Mira*; cause: avoiding small ship.
13. April 27, 1965—*Chernovici*; cause: manoeuvring.

ii. Striking vessel berthing or unberthing:

1. June 11, 1959—*Aviz* collided with *Joas Ferreira*; cause: crew error.
2. June 14, 1959—*Argus* collided with *Joas Ferreira*; cause: wrong engine movement received.
3. December 15, 1962—Tug collided with *Camelia*; cause: unknown.
4. December 30, 1963—*Yorkwood* struck moored *Arthur Cross* while approaching berth; cause: bad weather (no action taken; pilot now retired).

III. Accidents:

a. Damage to pier: Nil

b. Damage to buoys: Nil

c. Others:

1. January 3, 1963—*Imperial Sarnia* caught cable in anchor; cause: winds; emergency anchor.

IV. Incidents:

a. Striking pier:

1. June 1, 1961—*Joas Ferreira* suspected of striking pier; cause: unknown.

*For detailed statistical breakdown by year, vide Appendix B(1).

Subsection II

PILOTAGE DISTRICT OF BRAS D'OR LAKES

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Apart from the provisions of the Canada Shipping Act which are generally applicable to the pilotage service and its organization, the specific legislation that applies to this District is now contained in two regulations: the order creating the District and the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Bras d'Or Lakes Pilotage District was created on September 9, 1943, by an Order from the Governor General in Council (P.C. 7087) through the amalgamation of the former Pilotage Districts of Bras d'Or and Richmond County, which were thereby rescinded (Ex. 1536(a)).

The limits of the new District are defined as follows:

"The limits of the Bras d'Or Lakes Pilotage District shall extend from Point Tupper in the Strait of Canso, eastward to Red Point, embracing all navigable waters in and adjoining the County of Richmond, including St. Peter's Canal, and shall include the waters of Bras d'Or Lake, Great Bras d'Or and East and West Bay, all adjacent waters, ports and harbours, as far northward as an imaginary line drawn from Cape Dauphin to Point Aconi and to the highway bridge over Little Bras d'Or at Little Bras d'Or".

The Order in Council also provides for the payment of dues to be compulsory and appoints the Minister of Transport Pilotage Authority.

The only provision in this Order in Council which is not clear is that part which describes the southern limits of the District in that its seaward extent is described in the most vague way completely inconsistent with the imposition of the compulsory payment of pilotage dues. One important question is whether that part of the waters of the Strait of Canso that are "adjoining the County of Richmond", i.e., up to Point Tupper, are fully included in the Pilotage District and, therefore, whether all ships merely in transit through the strait are subject to the compulsory payment of dues unless they enjoy an exemption. As far as the Strait of Canso is concerned, even if the expression "adjoining" is interpreted to mean up to the mid-stream line, the problem is not solved since it would be a preposterous

situation if ships were obliged to navigate on the west side of the Strait in order to avoid paying pilotage dues.

For the reasons already mentioned (Part II, pp. 243 and ff.), reference to an electoral division such as the County of Richmond should never appear in the description of the limits of a Pilotage District.

(2) REGULATIONS ENACTED BY THE PILOTAGE AUTHORITY

Such regulations are contained in the General By-law sanctioned by Order in Council P.C. 1960-1450 of October 20, 1960, as amended by P.C. 1963-1571 of October 24, 1963, and by P.C. 1965-686 of April 13, 1965 (Ex. 377).

The main features of the General By-law are:

- (a) It provides for full control over the provision of pilotage services by the Pilotage Authority through its local representative, the Superintendent.
- (b) The pilots' status is *de facto* employees of the Authority; they are not allowed to render any pilotage service except as approved by the Authority. Their earnings are pooled and their remuneration is a share of the pool based on availability for duty.
- (c) The pilot boat charge of \$20 is part of the pool, as are other pilotage dues (pilot vessel service is not provided by the Department of Transport). The only permissible deductions from the pool are "the current expenses of the District" and "accounts rendered by the pilots for expenses incurred in the course of their duties".
- (d) The relative statutory exemptions to coastal vessels registered in any part of Her Majesty's dominions and inland traders are withdrawn to the extent of one-third of the pilotage rates and only for vessels of not more than 1,000 NRT. This creates a most extraordinary situation in that, according to the By-law, larger vessels continue to enjoy full exemption while small ones are required to contribute. This regulation is *ultra vires* for such ships enjoying an absolute statutory exemption such as those of dominion Registry of not over 250 tons register tonnage (sub-sec. 346(f) C.S.A.).
- (e) The first licence issued is probationary. Its duration is left to the administrative discretion of the Authority and it is subject to withdrawal whenever the Authority feels the holder is not qualified (Part I, p. 269). A permanent licence follows. There are no provisions in the By-law authorizing the Pilotage Authority to limit either probationary or permanent licences with respect to a pilot's capacity or his territorial jurisdiction.

- (f) There is no apprenticeship. Pilots are recruited from local mariners but neither a certificate of marine competency nor navigational experience is required to be eligible for a permanent licence. However, the requirement for navigational experience is achieved indirectly by making service as Master or deck officer in vessels trading regularly in the District for two of the five years immediately preceding the date of examination a prerequisite for a probationary licence. No doubt the requirement was stated in this unusual way in order to protect the rights already acquired by the pilots who held a licence when the By-law provision was enacted. On the other hand, in view of the wording of secs. 10 and 12 it could be maintained that the Authority has power to issue three types of licence:

- (i) a licence valid for an undetermined period to any one, including a candidate lacking the prerequisite(s) to qualify for a probationary licence (subsec. 12(1)), noting in this connection that titles and subtitles do not form part of the legislation and that the use of different expressions is an indication that different meanings are intended;
- (ii) a probationary licence (the second type referred to in subsec. 12(1));
- (iii) a permanent licence (subsec. 12(3)).

The drafting is obviously faulty and should be corrected. No certificate of competency is required even for a probationary licence (General Recommendation No. 13, Part I, p. 494). The requirement for actual experience is vague in that it has to be acquired "on vessels", which, according to the By-law definition, would include any barge which is not a scow, or fishing vessel regardless of size.

- (g) Rates are provided for pilotage voyages, movages, cancellations and pilot boat charges but detention is not covered. There is a flat rate, in all cases. The distance factor in voyages is compensated by a different rate for each fixed type of voyage in the District.
- (h) There is no provision for leave of absence or a Pilot Fund.

2. HISTORY OF LEGISLATION

The present District is the result of the amalgamation in 1943 of two separate Districts which were brought together under the Minister of Transport as Pilotage Authority because of wartime considerations. Their only common characteristic was their contiguity.

- (a) The former District of Bras d'Or was confined to inland waters comprising all the navigable waters of the large inlet on the

northeast coast of Cape Breton Island called Great Bras d'Or and its extensions: St. Andrew Channel, St. Patrick Channel and Bras d'Or Lake.

- (b) The former Pilotage District of the County of Richmond was by contrast a coastal District embracing all the navigable waters within a 60-mile stretch of the southwest coast of Cape Breton Island from Point Tupper in the Strait of Canso eastward to Cape Fourchu, including St. Peters Canal, the man-made access to Bras d'Or lake from St. Peters Bay.

The extent of the pilotage waters in the Bras d'Or section of the District which are governed by legislation has varied considerably over the years:

- (a) In 1855, *Bras d'Or* was added to those ports and areas where the Nova Scotia Pilotage Statute applied (vide pp. 169-170). The seaward limit was the entrance to the inlet, a short distance inside the present limit, i.e., a line extending from Inner Table Island to Cape Dauphin (1855, 18 Vic. c. 123 (N.S.)).
- (b) After the enactment of the federal Pilotage Act of 1873 the Governor in Council, in accordance with the then prevailing policy, enlarged the pilotage waters to embrace a large sector of the Cape Breton Island coast from Cape Smoky in the north to Point Aconi in the south, including, *inter alia*, St. Anns Bay and all the inland waters to which the Great Bras d'Or inlet gives access with the exception of Little Bras d'Or. The name of the District was "the Pilotage District of Brass d'Or Lake and Great and Little Brass d'Or". A commission of five members composed the Pilotage Authority; three were from "Big Brass d'Or" and two from St. Anns (Order in Council dated May 7, 1874, Ex. 1536(b)).
- (c) In 1883 (Order in Council dated May 4, 1883), the 1874 coastal District was abolished and replaced by a much smaller District named the "Pilotage district of Bras D'Or" confined to the inland waters within the limits of the County of Victoria. St. Anns Bay, most of Bras d'Or Lake and part of St. Andrew and St. Patrick channels were no longer part of the District (Ex. 1532).
- (d) In 1931 (P.C. 1640 of July 1931), because there were no pilots for St. Andrew channel or Little Bras d'Or, the inland limits of the Bras d'Or District were extended to include all the inland waters to which the Great Bras d'Or inlet gave access, including Bras d'Or Lake, and the seaward limit, which was a line running from Point Dauphin to Point Aconi, was further extended to Alder Point in order to include the small channel of Little Bras d'Or.

- (e) On July 6, 1938, the limits were again altered in order to exclude the inlet of Little Bras d'Or.

The pilotage waters of the southern part of the present District have also varied from time to time:

- (a) Before Confederation there was only one small port pilotage operation in that region, i.e., the port of Arichat situated on the south side of Madame Island, one of the ten ports to which the Nova Scotia 1851 pilotage legislation applied (vide p. 170). The pilotage waters were limited to the limits of the port itself.
- (b) By an Order in Council dated April 3, 1875 (amended June 11, 1879) the Governor in Council also created a coastal District under the name "a pilotage district in Richmond County", extending over some 60 miles from Point Tupper in the Strait of Canso to Cape Fourchu on the Atlantic Ocean and embracing all the navigable waters of the County of Richmond, including the part of Bras d'Or Lake contained therein. On May 11, 1889, the description of the District was amended "to include St. Peters Bay, Lennox Passage, St. Peters Canal and the southern portion of Bras d'Or Lake" (Ex. 1532).
- (c) By Order in Council P.C. 548 of February 23, 1894, the 1879 Pilotage District was abolished and the Pilotage District of Richmond County was established. Its limits remained the same.
- (d) Shortly before the amalgamation of the two Districts, the limits were amended on April 12, 1943 (P.C. 2935) to extend farther into the inland waters to embrace the whole of Bras d'Or Lake and part of Great Bras d'Or up to Baddeck.

On September 9, 1943, by Order in Council P.C. 7087 (Ex. 1536(a)) the two Districts of Bras d'Or and Richmond County were amalgamated to form the present District and their respective pilotage commissions were replaced as Pilotage Authority by the Minister of Transport. This was a wartime measure. During the war, ships carried coal through these inland waters as an emergency security measure against the submarine threat. Two Pilotage Districts did not function well under these circumstances and a single District was established. The Minister exercised control of pilotage activities and administered the District and the service through the Superintendent of Pilots of the adjacent Pilotage District of Sydney. The limits of the new District were those that still exist today (vide p. 308). They are the same as the seaward limits of the two former Districts except that the southern limit was restricted to Red Point (rather than Cape Fourchu) reducing its southern coastal front to some 35 miles. The governing legislation has not been amended since. Although the emergency situation no longer

exists and traffic through the inland waters has diminished considerably, coastal traffic bound to Port Hawkesbury, situated just outside the District limits, has grown in size and importance. For these reasons, a pilotage reorganization was contemplated but no action has been taken to date.

Two possible solutions have been considered by pilotage officials in the Department of Transport:

- (a) Determine the extent to which pilotage services are required in the Strait of Canso and whether a separate District should be established for this area.
- (b) Either abolish the Bras d'Or Lakes District as such or extend it to include the Strait of Canso, if necessary.

The first by-laws for the northern District were enacted in 1878 (P.C. of April 12, 1878) and superseded from time to time. However, the only by-laws for the southern District were enacted in 1894. They provided for a pilotage service operating under the free enterprise system. The number of pilots in Bras d'Or was limited to 12, reduced to 10 in 1922, but in Richmond it was left to be fixed by discretionary administrative decision of the Pilotage Authority.

When the Districts were amalgamated the Minister as Pilotage Authority established new by-laws (Order in Council P.C. 7520 of September 30, 1943) which were quite similar to the existing By-law which superseded them in 1960.

From 1951 to 1964, the District received direct subsidies from the Crown by way of financial assistance toward the cost of maintaining, operating and repairing pilot vessels. The amount was originally \$200 per annum (P.C. 164/1166 of March 9, 1951), which was raised to \$500 in 1954 (P.C. 1954/590 of April 22, 1954) and to \$750 in 1960 (P.C. 1960-36/257 of March 3, 1960). This subsidy was discontinued in 1964 (P.C. 1964-24/336 of March 5, 1964) (Ex. 1497 (a)) after the rates had been increased, effective October 24, 1963, by the inclusion in the tariff of a \$20 pilot boat charge. This was one of the recommendations the pilots submitted to this Commission.

Chapter B

BRIEFS

Only one brief (B.20, Ex. 406) was presented in the form of a joint submission by the three pilots of the District. In essence, it outlines the limits of the District, its navigational hazards and the operation of the pilotage service, including the hired pilot boats, and submits the four following recommendations (the added notations indicate the page(s) of the Report which deal with them):

- (a) The size and hazards of the District are such that three licensed pilots are required. (Vide p. 344.)
- (b) The nature and extent of the District require the services of three pilot boats. (Vide pp. 290-291 and p. 344.)
- (c) A pilot boat charge should be added to the tariff. (Vide p. 327.)
- (d) The rate structure should be modified so that the dues will vary "in line with time and service given by pilots".

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

The seaward northwestern limit of the District corresponds in practice to its legal definition (p. 308) bearing in mind that boarding area and pilotage waters are frequently confused. The pilots consider this limit to extend from Table Head to Cape Dauphin, which is well within the legal limit, but on rare occasions they are called upon to board a vessel further seaward up to the legal limit off Point Aconi.

The southwestern seaward limit no longer corresponds to modern pilotage requirements. While originally the pilotage services in this area were for Port Arichat and passage through St. Peters Canal, a pilotage demand developed at Port Hawkesbury just outside and west of the District limit in the Strait of Canso, which the District pilots meet in competition with an unlicensed local pilot. The reason Point Tupper was made the western limit was that the Strait of Canso was always navigated without pilots before the causeway was built and Point Tupper was a convenient boarding area for ships bound to or from Arichat and St. Peters or through St. Peters Canal. Since the Canso causeway was completed in 1957, Masters unfamiliar with its canal and locks have sought the services of a pilot. As a result, the District pilots engage in such piloting, which frequently extends to about 4 miles northeast of the causeway to the area off North Canso Light and vice versa. The Pilotage Authority is aware of the fact and the pilots are authorized to do so by the Supervisor of Pilots in Sydney. When they pilot outside the District they are no longer considered licensed pilots nor are they governed by the District By-law. They fix their own price for their services and the income so earned does not form part of the District Pilotage Fund but belongs to each pilot personally.

The pilots have not requested the extension of the District limits north of the causeway and in their brief they made no mention of their activities outside the District. Apparently they are satisfied with the present arrangements.

Consideration was given in Ottawa to extending the District from Point Tupper to include the causeway and at the time of the Commission's hearings in Sydney the Superintendent had submitted to Ottawa three alternative solutions which in brief are:

- (a) Extend the Bras d'Or District northwest to include the causeway locks and its approaches and southeast to Mulgrave. Since only a few of the many ships transiting the causeway canal employ a pilot, it was considered that the pilotage demand could readily be handled by the three District pilots.
- (b) Establish a new District for the Strait of Canso area including Mulgrave and the southwest part of the present Bras d'Or District. This proposal would have local support, but it was pointed out that the then pilotage traffic did not warrant it and could not be self-supporting unless a high tariff was fixed or compulsory payment established. Although approximately 2,000 vessels transit the causeway canal annually, the majority are small craft not requiring a pilot. While the ships that transited the canal in 1962 represented over one million NRT, the Bras d'Or pilots piloted only 27. In 1963, they piloted 20 ships and the local pilot 14.
- (c) Continue the present arrangements by permitting the Bras d'Or pilots to perform services outside the District limits in competition with local pilots. This solution was favoured by the Superintendent because it has worked well, but he cautioned that, if traffic increases, the situation would have to be reviewed.

Solution (c) has been adopted to date. The Department of Transport has hesitated to establish the compulsory payment of pilotage dues in the Strait of Canso since there has never been such a requirement in the past.

For a number of years the Point Tupper/Port Hawkesbury area has ceased to be merely a boarding point and has become the busiest section of the southern part of the District, with considerable effect on the pattern and nature of the pilotage service. Most of the District pilotage traffic in that area is bound to or from points where industries have been established since the war. (Vide analysis of the *Workload* pp. 330 and ff.) Pilotage requirements are bound to be drastically affected by the creation of the deepwater port in the Point Tupper area which will accommodate supertankers up to 312,000 D.W.T. and other large cargo ships. These developments will require a new assesment of pilotage requirements and organization.

(2) PHYSICAL FEATURES

The Bras d'Or Lakes Pilotage District is entered from the north by two channels: Little Bras d'Or (a tortuous shallow passage limited by a highway bridge with a vertical clearance of 22 feet leading to St. Andrew

Channel used by local traders and small craft) and Great Bras d'Or, 4 miles northwest, through which larger vessels proceed. The funnel shaped approach crosses the northern limits of the District, which are defined by a 5-mile line between Point Aconi and Cape Dauphin. For $3\frac{1}{2}$ miles the area of approach narrows to 2 cables between Carey Point and Noir Point. The pilot embarks from a hired pilot boat about 1 mile south of the District limit between Table Head and Berry Head in the vicinity of the channel fairway buoy off Carey Beach.

The channel to Noir Point is 2 miles long and 600 feet wide with a least depth of 27 feet through which the tidal stream reaches a velocity of 4 to 6 knots and which continues for a further five miles to Seal Island Bridge. The bridge span is 500 feet (clearance 119 feet) through which a strong set prevails when the tide is running. However, passage through the channel and the span is generally timed for slack tide. The sailing directions in *St. Lawrence Pilot, 2nd Ed., 1963* (Ex. 16) warn that it is very dangerous to attempt passage without local knowledge, except under favourable circumstances of weather, wind and tide. The very small volume of traffic plying Great Bras d'Or is usually destined for Baddeck, 20 miles from the boarding area, through St. Patrick Channel to Little Narrows (30 miles), and very occasionally to Whycocomagh (38 miles).

Baddeck and Whycocomagh export pulpwood and Little Narrows, gypsum. All have berthing facilities to accommodate the vessels which call and berth and unberth under their own power. Tugboats are not available. Except under extremely adverse weather conditions, their approaches present no unusual navigational difficulties. On rare occasions a vessel may enter the Lake through the southern entrance *via* St. Peters Canal to load gypsum at Little Narrows and exit through the northern entrance.

The distance on a through course from the fairway buoy at the northern entrance to the exit at St. Peters Cannal at the southern entrance is approximately 50 miles. *En route* a Canadian National Railway swing bridge crosses Barra Strait at Grand Narrows with a span of 80 feet. The tidal current there reaches 3 knots at mid flood and mid ebb tide, but safe passage can be made during periods of slack water. The channel through St. Peters Inlet to St. Peters Canal, a distance of about 5 miles, is narrow with several curves but presents no difficulties in fine weather.

Construction of the first St. Peters Canal and lock was commenced in 1854 and completed in 1869 to provide a southerly access to Bras d'Or Lake and accommodate vessels drawing 13 feet of water. In 1881, it was deepened to 18 feet. In 1917, the lock was enlarged from 200 feet by 48 feet to 300 feet by 48 to provide passage for vessels with a normal draught of 17 feet and has remained unchanged since. The length of the canal is 2,640 feet.

At Point Tupper in the Strait of Canso vessels secure at seven dophins positioned off the Point, three of which are actually west of the District limit. Here gypsum is loaded by escalators.

The Canso Canal, three miles west of the District limits, was built to permit the passage of shipping through the Strait of Canso after the completion of the causeway, which connects Cape Breton Island with the mainland. Construction was completed in December 1956. The canal is crossed by a railway and highway bridge with a swing span. The length of the canal is 0.78 miles from the southerly end of the south mooring berth to the northerly end of the north mooring berth which contains the tidal lock with two pairs of sector type gates. The lock is 820 feet in length and 80 feet wide and will accommodate vessels with a normal draught of 28 feet.

The season of navigation in the inland waters extends from roughly the middle of May to the end of December, depending on the severity of winter, but in the southern part of the District in the Strait of Canso area it extends throughout the year.

(3) AIDS TO NAVIGATION

A black light buoy marked "Carey Beach" showing a flashing white light and fitted with a radar reflector marks the entrance to the Great Bras d'Or channel, which is well defined by light and bell buoys, and leading lights situated at Noir Point give onward guidance. Shore based lights and light, bell and spar buoys are located at points of danger throughout the inland traffic routes and well defined leading lights and marks give guidance to Baddeck, Little Narrows and Whycomagh. The channels leading to and from St. Peters Canal are also well defined. The District Marine Agent testified that a malfunction of a navigational aid is attended to immediately after being reported.

Aids to navigation along the southern portion of the District are reported adequate as well as those leading to and from the Canso causeway canal. There were no complaints or submissions for improvements in aids to navigation within the District.

(4) MARITIME TRAFFIC

In past and recent years, maritime traffic has ranged from fishing vessels to coastal and ocean-going freighters. Small craft, including fishing vessels, ferry boats, cruising yachts and coastal traders, ply the District inland waters but larger vessels are restricted by the dimensions of St. Peters Canal to about 10,000 gross tons and by the physical features of the ports

at which they call. Traffic is more extensive in the southern area of the District, where fishing vessels, coastal traders and medium sized ocean-going freighters appear in good numbers off Isle Madame, in Petit de Grat Inlet and the harbour of Arichat. There are also larger vessels bound through or from the Strait of Canso, some transiting the Canso Causeway Canal, while others are bound to or from Point Tupper, Port Hawkesbury, or other ports in the area. In the course of the next few years, the traffic pattern will change as the Point Tupper industrial development progresses and its superport is constructed. Then safe navigation will, no doubt, become a matter of pilotage concern.

The pilots stated in their brief:

"Major industries within the Pilotage District of Bras d'Or Lakes are the shipping of gypsum from Little Narrows and Point Tupper, pulpwood from Baddeck, Point Tupper and other sections of the Lakes, processed fish from West Arichat and, in addition, British American Oil Company have storage tanks at Point Tupper which their tankers service."

The following shipping statistical tables provided by the Dominion Bureau of Statistics (Ex. 1483) show the total number of vessels of 250 net tons and over that arrived at the ports or places named, including their aggregate net tonnage and the amount of foreign and coastwise cargo handled for each of the years indicated.

BRAS D'OR LAKE

BADDECK

Year	No. of Ships	Net Tons	Cargo Handled (Tons)	
			Foreign	Coastwise
1965.....	21	50,640	61,161	30,320
1966.....	19	43,123	40,698	32,482
1967.....	13	17,717	22,260	3,314

The average size of vessels in 1967 was 1363 net tons.

LITTLE NARROWS

1965.....	46	162,804	184,309	225,995
1966.....	37	123,042	119,830	195,655
1967.....	36	141,266	136,772	202,195

The average size of vessels in 1967 was 3924 net tons.

Study of Bras d'Or Lakes Pilotage District

VESSEL TRANSITS, ST. PETERS CANAL

Year	UP	DOWN	Total
	From St. Peters Bay	To St. Peters Bay	
1958.....	198	199	397
1959.....	198	184	382
1960.....	275	280	555
1961.....	273	274	547
1962.....	238	217	455
1963.....	185	168	353
1964.....	188	198	386
1965.....	163	166	329
1966.....	153	150	303
1967.....	135	115	250

NOTE: In 1966 the total net tonnage of vessels upbound was 5,755 tons; an average of 38 net tons per vessel. In the same year the total net tonnage of vessels downbound was 3,352 tons, giving an average of 22.4 tons per vessel, thus indicating that the vast majority of vessels transiting the Canal are small craft.

PORT HAWKESBURY (INCLUDING POINT TUPPER)

Year	No. of Ships	Net Tons	Cargo Handled (Tons)	
			Foreign	Coastwise
1965.....	111	422,066	708,508	45,165
1966.....	119	397,932	754,457	47,268
1967.....	85	350,789	575,595	62,722

Average size of vessels in 1967 was 4127 net tons.

ARICHAT

No vessels of 250 net tons or over are recorded calling at this port.

VESSEL TRANSITS, CANSO CAUSEWAY CANAL

Year	UP (N.W.)	DOWN (S.E.)	Total
1958.....	616	626	1,242
1959.....	625	621	1,246
1960.....	609	619	1,228
1961.....	589	591	1,180
1962.....	574	565	1,139
1963.....	518	562	1,080
1964.....	672	695	1,367
1965.....	629	829	1,458
1966.....	639	703	1,342
1967.....	557	614	1,171

NOTE: In 1966, the total net tonnage of vessels upbound was 485,143 tons; an average of 759.2 tons per vessel. In the same year the total net tonnage of vessels downbound was 588,582 tons; an average of 837.2 tons per vessel, indicating that the majority of vessels transiting the Canal were coastal traders and ocean-going vessels of medium size.

2. NATURE OF PILOTAGE SERVICE

To assess the nature and importance of the pilotage service, it is necessary to distinguish between the District proper, i.e., the inland waters and their two access channels, and the southern coastal area and the Strait of Canso.

Navigation in the inland waters is restricted by certain physical features, such as narrow channels at certain places, the available depth of water, the restricted size of St. Peters Canal which limits vessels to 17 feet of draught, and the swing bridge at Grand Narrows with its span 80 feet wide. No pilotage traffic uses the Little Bras d'Or access channel. Although tides and currents do not cause difficult problems, local knowledge is necessary to effect speedy and safe voyages through these confined waters especially since the size of most vessels that employ pilots has reached the maximum permissible limit.

On other hand, the great majority of the vessels plying these waters are regular traders servicing the few local industries situated in this area. The limitation of St. Peters Canal prevents present day larger vessels using the inland waterway for mere transit purposes as was done during the war. Traffic in Bras d'Or Lake is negligible. In 1967, only four pilotage charges were made for either the canal or the bridge transit, which could mean that only two ships employing a pilot transited the area that year. The aggregate number of such charges for the years 1964, 1965 and 1966 was 6, 5 and 3 respectively. Almost all vessels using the services of pilots that ply the inland waters proceed in and out through the Great Bras d'Or channel and do not enter Bras d'Or Lake.

In the south coastal part of the District, pilotage traffic is light and consists of a few small vessels calling at St. Peters and an occasional one using St. Peters Canal.

The construction of the Canso causeway and recent industrial developments in the Port Hawkesbury and Point Tupper area have created a pilotage demand for which the organization of the Pilotage District and its services were never intended, i.e., piloting vessels through and beyond the Canso causeway lock and port pilotage at Port Hawkesbury and Point Tupper. At neither of these places is detailed local knowledge a prerequisite. Navigational conditions involve no special difficulties beyond the competence of a ship's Master. The main qualification is ship handling during near approach, berthing and unberthing.

In the near future, qualified and well-trained "Docking Masters" will no doubt be required to handle the huge supertankers and other large vessels that will use the Point Tupper deepwater port now under construction, provided the Masters of these vessels do not undertake to do so themselves. This type of professional work is beyond the scope of the pilotage service for which the District was organized and is not within the present competency of its pilots.

Despite the text of the By-law provision dealing with the withdrawal of the relative exemptions granted by subsec. 346(e) C.S.A. (p. 309), the practice followed is to apply the compulsory payment of dues as if the relative exemptions of subsec. 346(e) had been withdrawn *in toto* for vessels over 1,000 tons and in part for those under this tonnage (Ex. 1308). However, a surprisingly large number of non-exempt vessels dispense with pilots as shown by the following table.

Year	Trips		Movages	
1961.....	35	\$1,400.00	6	\$80.04
1962.....	39	1,560.00	—	—
1963.....	58	2,006.72	4	52.00
1964.....	48	1,866.68	—	—
1965.....	31	1,318.34	1	13.00
1966.....	72	3,035.00	—	—
1967.....	47	2,150.06	—	—

SOURCE: EX. 1308.

At the time of the Commission's hearing in 1963, the pilots anticipated an increase in pilotage traffic in the Strait of Canso but not in the inland waters where trade is directly dependent on local industry. For instance, they pointed out that in the early 1960's there had been a decline in pilotage in that part of the District, owing in part to the Mersey Paper Company ceasing to employ pilots for their ships carrying pulp wood.

Larger ships that pass through the Canso Canal for the first time may use a pilot to save time. However, most vessels, and some over 12,000 tons, that regularly transit the canal do not employ pilots.

3. ORGANIZATION

The Minister of Transport has been the Pilotage Authority of the District since the amalgamation of the two former Districts of Bras d'Or and Richmond County, despite the fact that the emergency situation which warranted a direct control of pilotage by the Minister of Transport ceased at the end of the war. Consideration, however, was given to re-establishing a local commission but the pilots preferred to retain their existing organization because, among other things, they feared that their security of tenure might be jeopardized under a local commission whose members were political appointees. Another obvious reason was the indirect financial assistance derived from the Department of Transport providing administrative services free of charge through its local representative at Sydney.

The function of Superintendent of the District is discharged by the Sydney District Supervisor but otherwise the two Districts are administered separately. In fact, what was achieved is a federation type District, i.e., Districts are united for administrative purposes but the services remain separate.

4. PILOTS

At the time of the Commission's hearing in 1963, there were only three pilots and only two were fully active. On account of ill health the third, Pilot W. C. Forgeron, accepted assignments only in the vicinity of his residence at Arichat, except in an emergency. He retired August 31, 1964. The two remaining pilots, Daniel J. Campbell and Laurier Walter Kaiser, were aged 52 and 56 respectively on May 1, 1968.

The main requirement to become a pilot is a good knowledge of the whole District; a marine certificate of competency is not required. There is no apprenticeship but to ensure local knowledge and experience the By-law now requires that a candidate must have served in the District regularly as Master or deck officer for two of the five years immediately preceding the date of his examination. The type of vessel in which such service is to be performed is not defined (vide p. 310). Pilot Forgeron had a Master's Home Trade certificate and Pilot Kaiser is the holder of a Master's tugboat certificate. Pilot Campbell, the last to be licensed (Feb. 13, 1958) possesses no marine certificate of competency. He required three years intermittent experience to become sufficiently familiar with the District waters to become a pilot.

The pilots are not permitted to engage in any other occupation. They consider this a wise rule because effective pilotage services could not be provided otherwise. They must always be available and the extent of their District often requires them to travel extensively to reach their assignments on time. However, they have been allowed to pilot outside the District in the Strait of Canso.

In 1963, Pilot Campbell expressed the opinion that three pilots were sufficient to handle the then existing traffic, but he warned that, if their number were reduced, vessels might be seriously delayed. He added that three pilots would not suffice to handle the traffic if the Strait of Canso were included in the District and the payment of dues made compulsory. In 1965 and 1966, only two pilots attended efficiently to a slightly larger number of assignments, not counting their pilotage in the Strait of Canso, but in 1967, pilotage traffic was considerably reduced. (For *Workload* statistics, vide pp. 330 and ff.)

The By-law does not provide for leave of any sort.

There have been no disciplinary problems in the District. Shipping casualties have been all of a minor nature. From 1958 to 1967 there were nine, six while under way and three while berthing. In only one case was the cause attributed to the pilot's fault for giving the wrong engine order. These casualties are summarized as follows:

SUMMARY OF SHIPPING CASUALTIES, ACCIDENTS AND INCIDENTS
INVOLVING PILOTS OF THE BRAS D'OR LAKES PILOTAGE DISTRICT
DURING THE TEN-YEAR PERIOD 1958-1967

A. EVENTS HAPPENING WHILE NAVIGATING:

I. Major Casualties (with or without loss of life)—Nil.

II. Minor Casualties (without loss of life):

a. Minor strandings:

1. October 30, 1959—*Liverpool Rover* struck submerged object; cause: unknown.
2. November 21, 1959—*Saint Adresse* grounded; cause: unknown.
3. June 20, 1962—*Federal Pioneer* grounded; cause: ship not answering wheel.
4. September 23, 1962—*Nieuwe Tonge* grounded; cause: unknown.
5. June 23, 1963—*Miquelon* grounded; cause: marker out of place.

III. Accidents (other than shipping casualties)—Nil.

IV. Incidents (without any damage whatsoever):

a. Touching bottom in channel:

1. October 3, 1963—*Baltic Sea* grounded; cause: navigation.

b. Others—Nil.

B. EVENTS HAPPENING WHILE BERTHING, UNBERTHING OR AT ANCHOR:

I. Major Casualties (with or without loss of life)—Nil.

II. Minor Casualties (without loss of life):

a. Minor strandings:

1. April 13, 1962—*Nordfarer* grounded while berthing; cause: wind.

b. Minor damage to ship:

1. September 30, 1965—*Birnack* struck quay at Baddeck; cause: wrong engine movement; no action taken against pilot.

III. Accidents (without damage to ships)—Nil.

IV. Incidents (without any damage whatsoever):

1. June 23, 1965—*Lozan* struck quay, exact location not reported; cause: fender missing; no damage.

SOURCES OF REFERENCE: Exhibits 393, 394, 1451 and 1453.

5. PILOTAGE OPERATIONS

(1) BOARDING STATIONS

There are no boarding stations officially established in the regulations.

At the northern entrance to the District the pilots board and disembark off Table Head or Point Aconi depending on prevailing conditions.

In the south western coastal part of the District, a vessel may enter District waters at any point along the coast. There are a number of customary small boarding areas which are used depending upon the destination or other circumstances of each case. The normal boarding or disembarking area for a ship bound through or from the Strait of Canso or to Point Tupper is off Bear Head on the right of the entrance to the strait. The normal alternate boarding station in that area is off Cape Argos situated on the left of the approaches to the Strait of Canso. However, when Masters are not familiar with the southern approaches to the Strait the pilots are often requested to embark in Guysborough Harbour in Chedabucto Bay. The normal boarding point within the Strait is at the northwestern extremity of the District at Point Tupper but when pilots do pilotage outside the limits through the Canso Canal they board or disembark off North Canso Light.

For ships proceeding through St. Peters Canal the boarding area is in St. Peters Bay and for ships proceeding to or from Arichat the boarding area is at the immediate approach to the port.

(2) PILOT STATIONS

There is no pilot station as such and the pilots are usually reached by telephone at their residence. The two remaining pilots in the District reside at Big Bras d'Or, situated near the northern boarding area. Former Pilot W. C. Forgeron resided at West Arichat and attended to local pilotage assignments from there during his last years of service.

(3) PILOT VESSEL SERVICE

Since there was no pilot boat charge prior to 1963 and the only reimbursement of the cost of this service was a small subsidy, a deficit had to be expected, but after a \$20 boat charge was set the situation should have been the opposite. Surprisingly enough, the deficit only grew larger. Investigation has established that this deficit was the result of an erroneous practice that developed to deal with the pilots' expenses and revenues for pilotage outside the District. The situation was corrected during 1967. The result is that the financial reports have given a false impression, including the amount of pilots' remuneration.

The following table shows pilotage service expenditures and revenue for the years 1958/59 to 1967.

PILOT VESSEL SERVICE IN THE PILOTAGE DISTRICT OF BRAS D'OR LAKES, N.S.

Year	EXPENDITURES			REVENUES		
	Table Head		Boat Hire	Total	Subsidies	Boat Fees Earned
	Boatman	Fuel and Repairs				
1958/59	\$1,725.00	\$898.17	\$ 10.00	\$2,633.17	\$500.00	—
1959/60	1,050.00	296.25	55.00	1,401.25	500.00	—
1960	1,050.00	251.16	120.00	1,421.16	500.00	—
1961	1,075.00	233.50	250.00	1,558.50	750.00	—
1962	1,150.00	130.20	690.00	1,970.20	750.00	—
1963	950.00	174.48	2,315.00	3,439.48	750.00	\$ 800.00 ^a
1964	—	—	6,380.00	6,380.00	625.00 ^b	5,580.00
1965	—	—	8,665.00	8,665.00	—	6,680.00
1966	—	—	9,350.00	9,350.00	—	5,300.00
1967	—	—	4,500.00	4,500.00	—	4,100.00
						\$2,133.17
						901.25
						921.16
						808.50
						1,220.20
						1,889.48
						175.00
						1,985.00
						4,050.00
						400.00

SOURCE OF INFORMATION: Exhibit 393.

^aThe pilot boat charge was introduced effective October 24, 1963.

^bThe subsidies were discontinued effective March 5, 1964.

At the time of the Commission's hearing, except for the northern entrance to the District, the pilots hired boats on a trip basis in the locality where they embarked or disembarked at whatever price they could negotiate with the various boat owners. The Superintendent assisted them as much as possible in these negotiations. In 1963, the current prices for boat hire at the various boarding areas inside and outside the District were as follows:

(a) St. Peters Bay	\$10.00
(b) Arichat	10.00
(c) Cape Argos	25.00
(d) Point Tupper	20.00
(e) Port Hawkesbury	10.00
(f) North Canso	25.00 plus lock fees.

The Port Hawkesbury pilot vessel is used to embark and disembark pilots for vessels bound either north or south through the Canso Canal. Therefore, in both cases the pilot vessel also transits the Canal.

At the northern entrance to the District, which originally was the busiest boarding station, the pilots used Pilotage Fund money to maintain a pilot vessel service through a special arrangement with a boat owner in Table Head. The owner supplied the boat and operated it for a salary of \$150 per month during the shipping season. In busy years, they also paid him a bonus. The boatman was considered an employee of the pilots and they paid Unemployment Insurance on his behalf. In addition, the pilots paid for boat supplies and repairs. The boatman was allowed to use the boat for fishing when not required by the pilots. In the busy year of 1958/59, the boatman's remuneration and bonus amounted to \$1,725.00 and the cost of supplies and repairs to \$898.17.

From 1961 to 1964, the pilots received a direct subsidy from the Crown toward maintaining and operating their pilot vessel service at the northern entrance to the District. In 1963, this subsidy was \$750.

In their brief the pilots suggested that the subsidy could be discontinued if a pilot boat charge of \$20 at Tupper Point and \$10 elsewhere were instituted. Their suggestion was acted upon. On October 24, 1963, the tariff was amended to add a boat charge at a uniform rate of \$20 throughout the District and the subsidy was discontinued shortly afterwards (vide p. 313). This was, in effect, a marked increase in pilotage dues which should not only have made up for the subsidy and covered the annual deficit but should also have resulted in a substantial increase in the pilots' remuneration. For instance, if such a boat charge had been in effect in 1962, the \$1,220.20 deficit for the pilot boat service would have been converted into a \$2,729.80 surplus. Instead, as the financial statement shows, the deficit not only remained but increased to a peak of \$4,050 in 1966.

The two reasons for this apparently distressing state of affairs came to light after investigation with the Department of Transport:

- (a) an upward revision of most charges for boat hire;
- (b) inconsistency in the bookkeeping procedure to account for expenses and revenues connected with services rendered by pilots outside the District limits at Port Hawkesbury and in the Canso Canal.

Following the establishment of the \$20 boat charge, the pilots discontinued their arrangement with the boatman at Table Head and hired a boat on a per trip basis at an agreed price that equalled the established boat charge. At the same time, the \$10 boat fee was raised to \$20. (Re the difference between pilot boat charge and cost of hire, vide Part I, p. 183.)

With such arrangements there should have been no deficit shown for this item, except for the hire of a pilot boat to serve vessels off Cape Argos—a rare requirement, e.g., none in 1967.

However, the reason for the continuing deficit was clear when it became known that all boat hire charges for both within and outside the District were paid by the Superintendent out of the Pilotage Fund, while only the pilot boat charges earned within the District (which had become a pilotage due in accordance with the tariff) were paid into the Fund. The pilots' earnings for piloting outside the District did not form part of the pool, but were collected and retained by the pilots themselves. In this respect, the pilots set their own rates, which were competitive with local pilots, but which should also have included the expenses they incurred providing their services. In the end result, the procedure followed did not alter the pilots' aggregate revenue because the money in the Fund belonged to them. However, the practice distorted the District's annual financial reports by showing the pilots' "take home pay" as less than it actually was. This situation came to light in 1967 when the Department of Transport instructed their local representative—the Superintendent—to cease the practice. Since then the pilots have paid the expenses they incur for services they render outside the District (Ex. 1536(d)).

(4) DESPATCHING

There is no despatching as such. Whenever a pilot is needed the request is directed to the residence of either of the two pilots at Big Bras d'Or and they arrange the division of work between themselves. Requests for pilotage come from several sources. Generally, agents contact the pilots directly but information is conveyed by the Sydney pilots when ships leave the Sydney District bound for the Bras d'Or area and, at times, requests are received by the Superintendent of Pilots in Sydney who passes them on to the pilots.

SHIPS USING THE PILOTAGE DISTRICT OF BRAS D'OR LAKES WITH AND WITHOUT A PILOT

Year	Number of Ships Paying Pilotage Dues ^a					Average Workload per Pilot on Establishment ^d
	Number of Pilots on Establishment	Trips	Movages	Bridging and Canaling ^b	Total	
1955/56.....	2	192	19	—	211	Not Available
1956/57.....	2	174	7	—	181	Not Available
1957/58.....	2.9 ^e	240	13	—	253	Not Available
1958/59.....	3	302	34	—	336	Not Available
1959/60.....	3	234	7	—	241	Not Available
1960.....	3	224	7	26	257	Not Available
1961.....	3	224	7	27	258	41
1962.....	3	230	12	2	244	39
1963.....	3	338	14	11	363	62
1964.....	2.6	346	18	6	370	48
1965.....	2	400	20	5	425	32
1966.....	2	354	15	3	372	72
1967.....	2	262	6	4	272	47

^aNot including pilotage performed outside the District north of Point Tupper.^bInstances of transiting the Grand Narrows bridge and St. Peters Canal were not segregated prior to 1960.^cInformation not available prior to 1961.^dPilot Forgeron counted as being fully employed until September, 1964.^eFrom 1957/58 to 1964, although Pilot Forgeron was on strength he did not share equally in the workload, due to ill health.

Ships requiring a pilot for the Canso Canal are advised by Notices to Mariners to make their request through the Canal Lock Master by radio-telephone eight or nine hours before arrival. The Lock Master's instructions are to call a Bras d'Or Lakes pilot but this is not always done because there is local pressure to employ the local pilot. Since this area, as well as Port Hawkesbury, is outside the District, the Bras d'Or pilots have no prior rights over any person qualified or otherwise who offers his services.

No doubt, in order to reduce travelling, most assignments are on a round trip basis and the pilot inbound normally remains at the port of destination to pilot the ship out.

(5) WORKLOAD

On the evidence received, the Commission is not in a position to establish accurately the workload of each pilot in any given year, but it is sufficient to arrive at a reasonable approximation. The self-explanatory table (on p. 329) shows the aggregate workload per year from 1955/56 to 1967 and the yearly average per establishment pilot.

1965 was one of the busiest years but pilotage traffic decreased considerably in 1967.

The inland navigation season lasts only eight months, while on the coast and in Canso Strait navigation is year round. However, during the eight-month navigation season pilotage demands are fairly well distributed from month to month without appreciable peaks or lows or any recurrent pattern. From 1962 to 1967, the total workload in the busiest month and the least busy month of each year and of the busiest pilot during those months was as follows:

ASSIGNMENTS DURING BUSIEST AND LEAST BUSY MONTHS AND BY BUSIEST PILOT IN THE PILOTAGE DISTRICT OF BRAS D'OR LAKES, N.S. DURING THE YEARS 1962-1967 INCLUSIVE

BUSIEST MONTH

Year	Month	Busiest Pilot	Total	Average per Establishment Pilot
1962.....	July	15	31	10.3
1963.....	May	17	42	14.0
1964.....	March	21	45	15.0
1965.....	July	29	56	28.0
1966.....	July	24	57	28.5
1967.....	July	20	35	17.5

LEAST BUSY MONTH

From May to December, inclusive					During Entire Year			
Year	Month	Busiest Pilot	Total	Average per Establishment Pilot	Month	Busiest Pilot	Total	Average per Establishment Pilot
1962	May	8	13	04.3	February	1	1	0.5
1963	December	6	11	03.6	March	2	5	01.6
1964	December	8	12	06.0	February	4	8	04.0
1965	December	15	26	13.0	February	2	3	01.5
1966	May	7	13	06.5	February	4	7	03.5
1967	November	10	18	09.0	February	1	1	0.5

SOURCES OF INFORMATION: Exs. 393 and 408.

The information available does not indicate how pilotage is distributed within the District. However, a sufficiently accurate picture may be obtained from the details of the workload of the busiest pilot in the busiest month of 1964 (Ex 408). He did 18 trips and one movage. The distribution of his 18 trips was as follows:

(a) <i>Inland Waters:</i>	9
(i) Through Great Bras d'Or entrance	
From or to Little Narrows.....	6
Baddeck.....	1
Eskasoni (in Bras d'Or Lakes).....	2
(ii) Through St. Peters Lock.....	nil
(b) <i>South Coast:</i>	3
St. Peters-Cape Round (Madame Island).....	3
Arichat-sea.....	nil
(c) <i>Canso Strait:</i>	6
(i) Eddy Point (S.W. Canso Strait boarding point)—Best Wall Dock.....	1
(ii) Bear Island (S.E. Canso Strait boarding point)—Best Wall Dock.....	1
(iii) Best Wall Dock—Ship Point.....	3
(iv) Point Tupper Port—Best Wall Dock.....	1

A pilotage trip from Table Head to Baddeck takes two hours plus one hour to berth, to Little Narrows three hours and one hour to berth, to Whycomagh five hours. The outward voyage usually takes a little less because unberthing takes less time than berthing. A complete crossing of the inland waters of the District from Table Head to St. Peters Bay takes about six hours.

In the Strait of Canso, from Bear Head or Eddy Point to the Best Wall Dock at Point Tupper the average time, including berthing, is two hours and a quarter and a transit of the Strait from Bear Island to North Canso Light takes about two hours.

In the case of the 19 assignments previously mentioned, the aggregate pilotage time was 62.4 hrs., plus 2.8 hrs. of detention, making a total of 65.2 hrs. on board and an average of 3.4 hrs. per assignment. The two longest assignments were from Table Head to Eskasoni, 6.6 hrs., including transiting the bridge, and 11.5 hrs. for the return trip.

Pilot Campbell stated that the longest period he had to spend on an inland waters assignment was 12 hrs. and this was due to fog. Occasionally, he was unable to disembark and was overcarried to Halifax.

Because there is no pilot resident in the vicinity of Point Tupper, the pilots have to travel long distances to or from assignments in the Strait of Canso or in the southern part of the District but from their residence at Big Bras d'Or it is only a short distance to the pilot vessel for boarding at Table Head or Point Aconi. They spent about half an hour on board the pilot vessel at Table Head and one hour at Port Aconi. Often the pilots have to wait for ships to arrive but they have found that the ETA's of regular traders in the District are quite accurate.

6. PILOTS' REMUNERATION AND TARIFF

At the time of the Commission's hearings in 1963, the pilots were satisfied with their system of remuneration but from the changes they advocated (p. 314) it appeared they were not satisfied with the net amount of their earnings. Since relative exemptions to the compulsory payment have been almost completely withdrawn (in practice if not in law), the only way to increase their earnings was to increase the pilotage rates and adopt a new tariff structure aimed at bringing in the additional revenues they recommended. As seen earlier (p. 309), the first part of their request was granted when the tariff was amended in 1963 to add a \$20 pilot boat charge. For this reason and also on account of the substantial increase in pilotage traffic between 1963 and 1966, the pilots' income has progressively recovered from the 1962 low. Another factor which helped maintain the level of their average "take home pay" was the reduction in the number of pilots from three to two when, on August 31, 1964, Pilot Forgeron retired on account of ill health.

However, the official documents do not convey a complete picture of the pilots' total pilotage earnings since the receipts from their pilotage work outside the District are not shown and are not taken into account, although the expenses then incurred were paid out of the pool. (This situation was corrected in 1967.)

The following table shows the pilots' remuneration for the period 1955/56 to 1967 according to the various meanings given to that term (for the various definitions of *pilots remuneration* see Part II, pp. 132 and ff.). For the years 1963-1967, the annual deficit incurred by the pilot vessel service (vide Table, p. 326) has been added to the shares.

Year	Establishment of Pilots	Average "Take Home Pay" per Establishment Pilot	Share of District Pilotage Earnings per Establishment Pilot
1955/56.....	2	\$6,900.00	—
1956/57.....	2	6,145.00	—
1957/58.....	2.9	5,638.14	—
1958/59.....	3	6,995.05	\$8,036.00
1959/60.....	3	5,091.67	5,631.00
1960.....	3	4,950.00	5,451.23
1961.....	3	4,663.83	5,158.68
1962.....	3	3,715.38	4,505.33
1963.....	3	5,496.20	6,164.57
1964.....	2.6	5,965.87	9,223.34
1965.....	2	9,217.50	13,164.17
1966.....	2	8,795.00	11,610.00
1967.....	2	7,075.00	9,126.50

SOURCE OF INFORMATION: Exhibit 393 (calculated on earned basis and including pilot boat fees).

Contrary to similar analyses in other Districts, the pilot boat fees are entered in the pool because the pilot vessel service cost is a charge against the District and, as seen earlier, has always resulted in a deficit which is reflected in the pilots' net revenue.

The item "take home pay" is not a net earning as in the case of the pilots in most Districts. Despite the fact that subsec. 8(2)(b) of the By-law provides the pilots the right to be reimbursed their expenses incurred in the course of their duties, the practice is for the pilots to ask only for the cost of boat hire and to pay their own travelling expenses. The result is that reported administrative costs are reduced and these expenses are not shared equally, as would be the case if the By-law were followed. Because neither of the two pilots resides in the Point Tupper area (both live at Big Bras d'Or) comparatively large travelling expenses ensue. They amounted to an average of \$584.33 per pilot in 1962, which was the least busy year in the last decade, and must have reached double that amount in the peak year of 1965. If one of the pilots had been stationed in the Strait of Canso area, a great saving would have resulted and, furthermore, the District would have been divided realistically into two separate pilotage zones.

The erratic pattern of the pilots' "take home pay" is due mainly to the fact that pilotage in the inland part of the District is directly dependent upon local industries.

The tariff comprises five items of pilotage dues:

- (a) the voyage (or trip) charge;
- (b) an extra charge for transiting the bridge at the Grand Narrows or transiting St. Peters Canal;
- (c) movage;
- (d) cancellation;
- (e) pilot boat charge.

The voyage charge (except for the special \$5 charge added to the voyage charge when it includes transiting the railway bridge at the Second Narrows and/or transiting St. Peters Canal) is based solely on distance. It provides for a flat rate per zone, irrespective of a ship's size or draught. The District is divided in four zones for this purpose, three within the inland waters and one for the southwest coastal waters:

- (a) the first zone from the northern entrance of the District to Grand Narrows and Little Narrows and, therefore, includes the Great Bras d'Or, St. Andrew Channel and part of St. Patrick Channel east of McIvors Point/Cow Point;
- (b) St. Patrick Channel west of McIvors Point/Cow Point;
- (c) Bras d'Or Lake;
- (d) the southwest coastal waters of the District, i.e., from Red Point to Point Tupper.

The voyage charge in all zones is fixed at a flat rate of \$40, except for the southern coastal zone, i.e., from Point Tupper to the entrance to St. Peters Canal or vice versa, or between any intermediate points, where the flat rate has been \$45 since 1965. Therefore, a vessel transiting the District from the northern entrance and exiting from St. Peters pays three zone charges plus two extra charges of \$5 each for what is termed bridging and canaling, making a total charge of \$130. However, if the same vessel proceeds from St. Peters to Point Tupper, there is an additional charge of \$45, making a total of \$175. A pilotage trip from the northern entrance to Little Narrows or Whycomomagh calls for a charge of \$80.

A movage calls for a flat charge of \$13. In the regulations, the term voyage is defined for tariff purposes as moving a vessel within a harbour. Otherwise, the governing definition would have been that of subsec. 357(1) C.S.A., which would have made any movement completed within a District a movage, which is unrealistic except in a port type District (vide Part I, p. 220).

A cancellation calls for a \$5 charge. There is no charge for detention. The pilot boat charge has already been dealt with, pp. 326 and ff.

The tariff does not apply to services rendered outside the District at Port Hawkesbury or for transiting the Canso Canal. For such services the pilots make their own arrangements with the Master of the ship or his agent. In 1963, the normal charge for pilotage service for the Canso Canal was \$40, i.e., if the pilot disembarked or embarked at the lock. But if he embarked or disembarked north of the Canal off North Canso Light, the charge was \$75, which included the \$25 lock fee for the pilot boat.

In 1948, the rates were increased by 30 per cent, i.e., from \$30 per zone to \$39. In 1960, they were raised to \$40 and the cancellation charge was added. The next increase occurred in 1963 by the addition of the boat charge which, at \$20 each time a pilot vessel is used, amounts to a substantial increase.

In their brief in 1963, the pilots recommended that the basic structure of the rates be completely changed in order that they be "in line with time and service given by pilots". They recommended that:

- (a) The flat rate system be abandoned and the rate per zone increased with the size of the ship, \$40 being a minimum charge, plus one dollar for every 100 NRT over 3,000.
- (b) The movage charge be \$15 for vessels up to 3,000 NRT and \$25 above that tonnage.
- (c) A boat charge be instituted in the amount of \$20 at Point Tupper and \$10 elsewhere.
- (d) The cancellation charge be increased to \$7.50.
- (e) A detention charge be instituted at \$2.50 per hour after the first hour.

As seen earlier, these recommendations were met to a certain extent. Granting a uniform \$20 boat charge instead of the \$10 charge recommended elsewhere than at Point Tupper appears to have been intended to give the pilots the overall increase in earnings they sought.

The trend to larger but fewer ships has also been felt in the inland waters of the District and has worked to the disadvantage of the pilots on account of the flat rate system. Increasing the flat rate would not be the correct solution because this would make the rate inequitable for the smaller vessels still plying the District. It is considered that once again the only adequate solution is a rate based on size, i.e., a rate per ton of maximum gross tonnage.

In view of the small number of places of destination within the inland waters of the District, the zone system may be retained on account of its simplicity. However, if the number of ports of call increases, the rate should be based on mileage rather than zone, as recommended in the British Columbia District, through a mile/ton price unit (Part II, p. 212).

Pooling

The pooling procedure is the same as existed in the Sydney District. District and service operating expenses are paid out of the pool as they are incurred. At the end of each month the net balance, less a certain reserve, is shared among the pilots equally on the basis of availability. The small reserve varies from month to month even at the end of the year when it is carried over to the next year undistributed. The amount is relatively small and there appears to be no set rule except the convenience of sharing, e.g., each pilot's share in 1965 was \$8,225, leaving \$258.89 undistributed. The amount carried over from 1964 was \$107.29.

Contrary to the situation in Sydney, a reserve is necessary here because substantial expenditures, i.e., the bills for boat hire, have to be paid from the pool as they are incurred.

The By-law does not provide for leave of absence of any sort (not even sick leave) and it would appear that, except in an extreme case such as pilot Forgeron's, sharing is on an equal basis with no record kept of availability. No doubt the pilots make private arrangements for absence from duty, including illness, without affecting pooling. In the case of Pilot Forgeron, however, the situation was different because his health from 1957/58 until his retirement in 1964 did not allow him to accept pilotage assignments except in the immediate vicinity of his home in West Arichat, thus restricting his work to the southwestern part of the District. By special arrangement with the pilots he was paid only for the assignments he performed. From 1959/60 the other two pilots always received exactly equal shares.

The money earned by the pilots for their work outside the District in the Canso area is not entered officially into the pool but it appears that the same kind of sharing exists between them as are the pilotage assignments they perform in the area.

7. FINANCIAL ADMINISTRATION

The Pilotage Fund is the only one and is operated in the same way as for the Sydney District. The annual reports follow the same format.

The Superintendent of the Sydney District is responsible for billing and collecting pilotage accounts incurred in the Bras d'Or Lakes District. The pilots themselves collect their remuneration for services rendered outside the District but experience difficulty at times and would prefer to have these earnings collected by the Supervisor. However, unless the places where such services are rendered (Port Hawkesbury and the Canso Canal) are included in the District, these earnings can not be made payable by regulation to the Pilotage Authority (sec. 343 and subsec. 329(h) C.S.A.) nor would the power to have a ship's clearance withheld apply (sec. 344 C.S.A.) (vide Part I, p. 488).

**COMPARATIVE ANALYSIS OF ANNUAL FINANCIAL STATEMENTS
PILOTAGE DISTRICT OF BRAS D'OR LAKES, N.S.**

	1958/59		1966		1967	
EARNINGS						
Undistributed balance from previous year	nil		\$ 258.89		\$ 250.29	
Dues collected						
Pilotage						
—previous year	\$ 286.00		\$ 5,100.00		\$ 713.00	
—current year	23,608.00	23,894.00	17,117.00	22,217.00	13,783.00	14,496.00
Boat charges						
—previous year	n/a		300.00		160.00	
—current year	n/a	—	813.00	1,113.00	3,980.00	4,140.00
Subsidy	500.00		n/a		n/a	
	\$24,394.00		\$23,588.89		\$ 18,886.29	
DISBURSEMENTS						
Table Head pilot vessel service						
Boatman's salary	1,725.00		—		—	
Boatman's U.I.C.	16.12		—		—	
Repairs, fuel, supplies	898.17	2,634.29	—	nil	—	nil
Boat hire	10.00		9,350.00		4,500.00	
Telephone and telegraph	259.55		259.90		295.10	
Stationery	nil		30.30		12.35	
	2,908.84		9,640.20		4,807.45	
Payments on pilots' behalf						
Canada Pension Plan	n/a		158.40		158.40	
Take home pay	20,985.16	20,985.16	13,540.00	13,698.40	13,750.00	13,908.40
Uncollectable accounts	nil		nil		nil	
Undistributed balance	500.00		250.29		170.44	
	\$24,394.00		\$23,588.89		\$ 18,886.29	
<i>Earnings during the year</i>						
Pilotage	\$23,608.00		\$17,920.00		\$ 14,153.00	
Boat charges	n/a		5,300.00		4,100.00	
	\$23,608.00		\$23,220.00		\$18,253.00	
<i>Earnings outstanding at the end of the year</i>						
Pilotage	nil		\$ 803.00		\$ 460.00	
Boat charges	n/a		200.00		160.00	
	—		\$ 1,003.00		\$ 620.00	

Since accounting, the financial statement, and sharing the pool are all based on cash on hand, neither accounts receivable nor accounts payable appear, except for information.

Entries under receipts are limited to pilotage dues. The result is that the annual report merely reflects transactions affecting the pool and not the whole Pilotage Fund.

The items of expenditure are:

- (a) The cost of pilot vessel service. This item now consists only of the aggregate bills received for boat hire (as seen earlier, those for outside services were irregularly paid from the pool up to 1967). Up to 1963 they also included the cost to the pilots of the pilot vessel service they maintained at Table Head, the boatman's monthly remuneration and the cost of repairs and fuel for his boat (p. 327).
- (b) Telephone and telegraph expenses incurred by the pilots. This item is quite large due to the fact that all pilotage arrangements are made by telephone or telegraph.
- (c) There is also a small amount for miscellaneous items. Up to 1963, they consisted exclusively of the Unemployment Insurance premiums paid by the pilots on behalf of their boatman who was considered their employee for that purpose. In the last three years, this item of expenditure has consisted only of the cost of stationery, which up to then presumably was supplied free of charge by the Department of Transport in the same way as they still provide postage. There are no group expenditures of any kind, no group insurance and no welfare plan. No doubt because the pilots are considered self-employed, they neither pay into, nor benefit from, Workmen's Compensation or Unemployment Insurance.

COMMENTS

The financial statement does not give an accurate picture of operations in the District or of the pilots' financial transactions for the pilotage services they provide outside the District: expenditures include the cost of pilot vessel services but receipts for pilotage services are not entered. In addition, the pilots' travelling and living out expenses incurred in the course of their pilotage duties are not shown.

It should be borne in mind that administrative expenses in connection with billing and collecting pilotage dues and operating the pool are borne by the Department of Transport through the cost of operating the Sydney Pilotage District and that the pilots pay no share of the operating expenses of their Pilotage Authority.

Subsection III

RECOMMENDATIONS AFFECTING THE
CAPE BRETON ISLAND AREA

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE CAPE BRETON ISLAND AREA

RECOMMENDATION No. 1

The Cape Breton Island Area to Constitute a Single Pilotage District of the Merger Type

The limited pilotage operations in any of the Cape Breton Island pilotage areas, including Sydney and North Sydney, do not warrant the creation of separate Districts for each or any of them observing the extensive organization and cost the operation of a District entails.

It is considered that the present and foreseeable future needs for public control over all the various pilotage services in the Cape Breton Island area can be economically and effectively met by a single Authority situated in the Sydney area administering a number of separate pilotage services in a Pilotage District of the merger type (vide p. 24), with *ad hoc* regulations for each separate service (Part I, General Recommendation 8, p. 478).

This would, in fact, only amount to giving legal status to a factual situation that has existed since 1943 through the device of appointing the Minister of Transport the sole Pilotage Authority for the various pilotage services involved and having all local administration performed by the same staff. Indirect control has been exercised over the service in the unorganized zone of Canso Strait by giving permission (which could be withdrawn) to the licensed pilots of the adjacent District of Bras d'Or Lakes to perform services, and by giving directives to have these pilots called when a pilot is required there.

The jurisdiction of the Pilotage Authority should reflect the factual situation and, therefore, should be limited to the areas where pilotage services exist and to the extent defined from time to time by Pilotage Orders. It should be modified from time to time to meet new or changing requirements by Pilotage Orders made by the proposed Central Authority, normally at the request of the Pilotage Authority.

RECOMMENDATION No. 2

The Territory of the Present Bras d'Or Lakes District and the Strait of Canso Area to Be Divided into Three Separate Pilotage Zones, and the Present Sydney District to Form a Fourth Zone

The pilotage service in the present Sydney District is a homogeneous operation which should continue.

However, the service organization in the Bras d'Or Lakes District was an arrangement of convenience for a specific pilotage demand which no longer exists, i.e., the use of enclosed waters merely for transit purposes. The situation has changed completely since and pilotage has developed into three distinct, unconnected services:

- (a) inland pilotage from sea to one of the few ports along the shores of the inland waters;
- (b) coastal and port pilotage in the St. Peters-Arichat area;
- (c) lock, and port pilotage in Canso Canal-Point Tupper area.

At present, the only common factors are the relative ease of pilotage and the limited demand. On the other hand, the services are of a different nature and are performed in separate, unconnected geographic areas which demand extensive travelling on the part of the pilots who now cover the whole area.

This disparity will amount to total incompatibility when the Point Tupper superport becomes an operational fact. The pilotage services then needed will require qualifications and skill for which the two present pilots are neither qualified nor trained. Such services will be required in Canso Strait as far as Point Tupper for the supertankers and superships that are expected to reach the maximum draught the Strait of Canso channel south of Point Tupper can accommodate (up to 90 feet) and highly specialized knowledge and skill for their safe navigation or handling will be required. For example, the *Universe Ireland*, the first of the 312,000-ton tankers for which Point Tupper is being prepared, is 1135 feet long and 175 feet wide and draws 80 feet fully loaded.

In addition to the four zones where pilotage services are now provided, additional zones should be created where and when a need for pilotage service develops and can be provided.

The licences of pilots should be limited as to territory by being restricted to one zone, i.e., the zone for which the pilot has qualified and is maintaining his qualifications through constant experience. The qualifications required from a candidate over and above the basic requirements provided in the new Act (Part I, pp. 301 and ff.) should be dictated by the particular requirements and circumstances of each zone and should be separately defined in the District regulations.

If there is no candidate qualified to become a pilot, the Pilotage Authority should have power to issue in each zone "Pilotage Adviser Licences" to persons who possess the necessary local knowledge but lack the required certificate of competency. Such a licence could be issued for an area where a Master could navigate confidently and safely with the guidance of such an adviser. This solution should apply especially where there is also insufficient traffic to make pilotage an attractive profession, e.g., the present St. Peters-Archat coastal zone. (Vide Part I, General Recommendation 12, pp. 492 and 493.)

If Recommendation No. 1 is implemented, the Cape Breton area will become a District of the merger type under a single Pilotage Authority. While administration should be centralized, each zone should be treated for operational purposes as a separate District staffed with its own pilots and regulated by its own local legislation devised to meet its peculiarities and specific needs. (Vide Part I, General Recommendation 8, p. 478).

RECOMMENDATION No. 3

The Pilotage Authority to Consist of One Individual

The ideal situation would be for the Authority to consist of a three-man Board representing Sydney and North Sydney, the Bras d'Or Lakes and the Point Tupper area.

However, in view of the small scale operations in each zone, it is considered that it would be advisable to form a one-man Pilotage Authority with headquarters at Sydney, acting as licensing authority for the various pilotage services in the District and also directing the service in the Sydney/North Sydney area (Part I, p. 511).

Because the Pilotage Authority's jurisdiction will extend over a number of separate pilotage services, this function should not be entrusted to any existing Port Authority. Such a solution is desirable only when the District is confined to the territory of one port and the pilotage service is merely a feature of the functioning of that port.

RECOMMENDATION No. 4

Pilotage in Sydney to Be Classified as a Public Service

In accordance with the criteria established in General Recommendation No. 17 (Part I, p. 509), pilotage in the area of Sydney and North Sydney can not be classified as an essential public service. For the time being, it should be classified as a public service, but it should be reclassified as a private service if it becomes apparent that ocean-going traffic will not increase above the present level.

Any qualified Master with the information provided by charts and official publications can safely navigate the harbour's confined waters, and a major casualty anywhere in the harbour would not disrupt traffic for any length of time. Pilotage is mainly a service to shipping by expediting the safe movement of ships. However, Masters who call regularly at a port soon become sufficiently familiar with its navigation and peculiarities to dispense with the services of a pilot. This fact is demonstrated by the high percentage (28.4%) of non-exempt ships which dispensed with the services of pilots in 1967, although they had to pay full dues. It is reasonable to believe that still more ships would dispense with pilots if the compulsory system were abolished. This applies only to foreign-going vessels since coastal and inland vessels of dominion registry have enjoyed full exemption since December, 1966.

Sydney is the main port within a highly industrialized region of the Province of Nova Scotia and it is important in the interest of the regional and national economy to maintain its effectiveness. However, it remains to be established whether the constant availability of an adequate pilotage service is a necessary adjunct. The traffic trend should be carefully analyzed with the aim of determining whether the port's importance is dependent on regular coastal and inland traders who have little or no need for pilotage services. If the latter proves to be the situation, pilotage should be classified as a private service within the meaning given to the term on page 509 of Part I of the Report.

The recent decline in ocean-going shipping at Sydney may be only temporary. Shipping statistics for the first semester of 1968 indicate a slight improvement over the same period in 1967. However, in view of the commitments to the service and the acquired rights of the pilots now on strength which must be respected, there is no need for an immediate decision.

RECOMMENDATION No. 5

Pilotage Administration and Pilot Vessel Service in Sydney to Be Reorganized so that Operating Expenses Are Reduced to a Realistic Level

The requirement for pilotage in Sydney Harbour is small and the organization for service should correspond.

The present organization is disproportionate and has resulted in large annual operational deficits that are borne by the Crown. For instance, the cost of the service for 1967 is estimated at \$153,800 and the dues collected, including pilot boat charges, yielded only \$37,000 (p. 295). These receipts are expected to decrease substantially when the compulsory payment of

dues is abolished, since more than one-fourth were paid by non-exempt vessels which did not employ pilots (p. 280). This unwarranted situation should be corrected.

The service is overorganized at all levels:

- (a) The number of pilots is excessive but there is no present effective means to remedy the situation, except by the slow process of normal attrition (vide pp. 283-284). It is believed that no difficulty will be caused by the conflicting legislation re the retirement at age 65 of the pilots now on strength because of the benefits they will then be entitled to receive under the Public Service Superannuation Act. The tenure of a licence is a personal right which a pilot may abandon if he so elects.
- (b) An adequate, realistic alternative should be found for the present costly 24-hour pilot vessel service maintained by the Crown for an average of fewer than two assignments per day. For further comments, vide pp. 290-291.

RECOMMENDATION NO. 6

Pilotage in the Three Zones Situated in the Present Bras d'Or Lakes District and the Point Tupper/Canso Canal Area to Be Classified as Private Services

At present, public interest is not directly involved in the services in the three zones of the existing Bras d'Or Lakes District and its adjacent area in the Strait of Canso because they are merely for the convenience of shipping and serve only private interests. Their interruption, or even their absence, would not prejudice the superior interest of the State or the public in general. Therefore, they should be classified as "private services" as was recommended for the various port services in the proposed Vancouver Island West Coast District (Part II, p. 210) and for the various services contained in the Prince Edward Island District (p. 25).

It should be the responsibility of the industries concerned to take the necessary steps to ensure the availability of pilots who would be licensed provided they meet the standards set by the Act and by the District regulations. In the Point Tupper area the industries concerned may have to see that their pilots acquire the necessary local knowledge, skill and experience in the navigation and berthing of superships. Since such pilotage will serve the interests of one or two companies only, they should assume full responsibility, including expenses, for the availability of the service.

Section Five

COMMISSION DISTRICTS AND OTHER AREAS ALONG
THE NEW BRUNSWICK AND NOVA SCOTIA COASTS AND
PILOTAGE AREAS IN CHALEUR BAY AND GASPÉ BAY

PREAMBLE

In contrast to the existing pilotage organization along the west coast of British Columbia, large areas of the navigable waters of the Atlantic coast are not included in any Pilotage District.

When pilotage was first organized after Confederation, the whole Canadian Atlantic coast was divided into Pilotage Districts in accordance with the policy adopted at that time. This organization failed because the Act contemplated only port pilotage (it contained provisions of exception for pilotage on the St. Lawrence River) and also because the only coastal pilotage performed was a little voluntary pilotage into the Bay of Fundy by the Saint John pilots. Eventually all these coastal Districts evolved, in fact, if not in law, into a number of Districts serving only one port or a group of ports approached by a common channel.

A large number of these ports lost their initial importance for a number of reasons, but mainly because regional needs are now more adequately served by other transportation media as a result of a changed industrial environment and the limitations of the ports' physical features and facilities. These features and facilities could be improved upon but the capital involved and the recurring maintenance costs would be difficult to justify economically.

As a consequence of decreased traffic many of the small Districts fell into inactivity and the office of Pilotage Commissioner became merely an honorific appointment which was often made as a political reward. In some Districts, the Pilotage Authority ceased to exist for several years because the Commissioners died or left the locality and were not replaced. A first step toward reform was amalgamation, e.g., in 1924, five small adjacent Districts at the head of the Bay of Fundy (Sackville, Harvey and Waterside, Hillsborough and Hopewell, Amherst and Shepody Basin) were amalgamated as the Chignecto Pilotage District. Twenty small Districts in New Brunswick and Nova Scotia, including Chignecto, have been abrogated since (vide Part I, App. II). Most of the remaining small Districts have been maintained, not to meet an increased demand for pilotage but because their respective Secretary-Treasurers have been attentive to their duties and submitted annual District reports to the Department of Transport.

In some of the abrogated Districts, as well as in ports that were never included in a Pilotage District, there is a demand for pilotage which may be even greater than in some existing Districts. The following table compiled from the 1967 shipping statistics of arrivals of vessels of 250 NRT and over shows the extent and importance of maritime traffic in the main ports not included in any Pilotage District which are situated in those parts of the eastern coast of Canada covered in this Section. It does not include ports where traffic consists mainly of ferry vessel service, such as Digby, Yarmouth, Grand Manan and Black's Harbour.

Port	No. of Ships of 250 NRT and over	Average NRT (per ship)	Cargo Handled
Hantsport, N.S.....	154	4,127.4	99% foreign
Liverpool (Brooklyn) N.S.....	107	2,309.9	76% foreign
Mulgrave, N.S.....	164	753.7	86% coastwise
Walton, N.S.....	55	1,445.1	100% foreign
Gaspé, Que.....	74	2,042.5	95% coastwise
Chandler, Que.....	21	1,790.6	51% foreign
Carleton, Que.....	24	1,124.7	95% foreign

In all the above ports, and in some smaller ones as well, pilotage is performed by local pilots. Information on this matter is generally contained in the *Pilot* publications issued by the Canadian Hydrographic Service, but in some cases it is not correct, e.g., *Nova Scotia (S.E.Coast) and Bay of Fundy Pilot*, Fourth Edition, 1966, page 228, states "pilotage is compulsory" at Parrsboro, although this District was abolished in 1960 and, even up to then, only the payment of pilotage dues was compulsory. Such errors prove that there is a failure of communication when these important publications are being prepared. Remedial action should be taken to ensure the information they contain is correct and up to date.

For the purpose of this Report, the Commission has not considered it necessary to investigate the extent and nature of the demand for pilotage at each of these ports, nor the need or otherwise for their public surveillance and control, except for the port of Gaspé (for which the establishment of a Pilotage District had been requested) and the port of Chandler (at which the Commission called during its visit to the area). The evidence obtained concerning these two ports is contained in *Subsections XI and XII*.

Subsections I to X contain studies of the nine small commission Districts still in existence as well as the former District of Richibucto which was abrogated in 1968. The new National Harbours Board port of Belledune, N.B., created in 1967, is referred to in the Restigouche and Bathurst District studies, and the port of Shippegan is mentioned briefly in *Subsection III* dealing with the District of Caraquet.

In these small Districts, as elsewhere, the financial and physical hardships of the free enterprise system forced the pilots into controlled pilotage. The change was gradual and, if a number of pilots were involved, much contention ensued. At first, the disappearance of competition among the pilots without a corresponding increase in control by the Pilotage Authorities concerned resulted in a less efficient service. In two Districts the process of change developed into a crisis serious enough to induce the Minister of Marine and Fisheries to order an official inquiry. The Miramichi District investigation (1892-1893) is discussed in *Subsection IV* p. 425. A second inquiry held in 1906 concerned complaints from pilots against the Pilot

Commissioners of the Hillsborough and Hopewell Pilotage District (one of the five Districts amalgamated in 1924 to form the Chignecto District). For the first five years after its creation in 1897 its five pilots competed with each other. They experienced the financial burden of owning and operating their own pilot vessel, and the hardship of continual cruising as far out and as long as possible in order to be the first to hail an incoming vessel. Such competition created discriminatory practices, e.g., some pilots neglected smaller vessels for more lucrative ones. Disputes multiplied among them, mainly on who had first hailed a ship and was thus entitled to her pilotage fees. After a few years, the pilots requested that they be treated as employees, i.e., their work equally divided among them by a Chief Pilot and their earnings pooled and shared equally. This arrangement worked well at first but gradually the pilots became lax. Since they were assured of their income, they failed to cruise at the seaward pilot limit to meet incoming vessels with the result that many vessels passed the boarding area without being spoken to and became exempt from pilotage dues. In addition, some vessels were unduly delayed awaiting the arrival of a pilot because pilots with other employment as well as pilotage tended to put their other occupation first. Under these circumstances the Pilotage Authority adopted a compromise solution by dividing the pilots into two competing companies. However, this did not solve their problem because one company acquired a better equipped and speedier pilot vessel and thus secured most of the clients. The investigating officer recommended that fully controlled pilotage be re-established and appropriate rules incorporated in the District regulations to provide for its orderly operation. When he communicated the result of the investigation to the Pilot Commissioners the Minister also recommended that the number of pilots be reduced when expedient in order that those retained might receive increased earnings (Ex. 1537).

The information on these ports obtained by this Commission from documentation and testimony at its public hearings is not complete, but the information available appeared sufficient to permit a general appraisal and, therefore, it was not considered necessary to make detailed investigations. The evidence reveals not only a most unsatisfactory state of affairs from the legal point of view but also the total inadequacy of the organization scheme provided by Part VI C.S.A. to deal with small pilotage services.

In none of the Districts dealt with in this Section is the pilotage demand sufficient to keep even one pilot fully employed or, with few exceptions, to assure him an adequate income. As a result, pilots must seek additional employment and pilotage becomes a secondary occupation.

In each of the Districts reviewed the compulsory payment of pilotage dues was imposed when they were first created, for no other apparent reason than to conform to the then adopted policy of the Government.

Many of the provisions of the various District By-laws are not in conformity with local requirements and, hence, are not followed. The main reason is that the By-laws were drafted by the Department of Transport on its own initiative by persons who were not fully conversant with local situations and requirements, largely with the aim of making them all uniform.

There are two other reasons why the system failed, first, partisan politics in the appointment of Pilotage Commissioners and Secretary-Treasurers (which even extended at times to the appointment of pilots), second, the absence of supervision over the activities of the Pilot Commissioners due to the Department of Transport's policy of non involvement. In most Districts this Commission found an atmosphere of goodwill and a desire to follow the proper course and there appears no reason to believe that the illegal practices being followed would not have been rectified if they had been brought to the attention of the Pilotage Authorities concerned.

Subsection I

PILOTAGE DISTRICT OF RESTIGOUCHE RIVER, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

There are not for this District nor for any other Commission District dealt with in this Section any statutory provisions of exception with specific application, and all special legislation that applies to them is contained in regulations. For the District of Restigouche River this legislation, excluding appointments, is wholly contained in the Governor General's Order, as amended, creating the District, and in the District By-law and its amendments.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of Restigouche River was created by the Governor in Council on February 9, 1935 (Order in Council P.C. 339, Ex. 1165) by the amalgamation of the former Districts of Bonaventure and Restigouche.

In addition to abrogating the former Districts together with all regulations then existing for such Districts, including those concerning the appointment of the two Pilotage Commissions and the Secretary-Treasurers, and establishing the new District, the Order in Council:

- (a) defined the limits of the District;
- (b) appointed the five Pilotage Commissioners of the new Pilotage Authority;
- (c) appointed Mr. A. F. Carr of Campbellton as Secretary and Treasurer and fixed his remuneration at "three (3%) per centum of the gross receipts and earnings of the pilots each calendar year";
- (d) imposed the compulsory payment of pilotage dues.

Except for the creation of the District and the compulsory payment of dues, all the other provisions of this Order were subsequently modified. New Commissioners have been appointed from time to time as vacancies occurred and in 1967 Mr. J. C. MacLauchlan, who since 1965 had been Secretary and Treasurer in place of Mr. Carr, was belatedly confirmed in his function by Order in Council P.C. 1967-1670 of August 30, 1967 (Ex. 1510(c)).

The District limits were last defined by the Governor General in his Order in Council P.C. 1957-1562 of November 22, 1957. It left the seaward limit approximately where it had originally been established in 1935 but the description is in simpler language (Ex. 1510(b)):

"The Pilotage District of Restigouche River comprises the waters of the Restigouche River and estuary from the limit of navigation and extending seaward as far as a line drawn from Little Belledune Point in the County of Restigouche, N.B., in a North True direction for a distance of three miles, thence along a line drawn to Maguasha Point, Bonaventure County, P.Q."

(2) DISTRICT REGULATIONS

All the regulations made by the Pilotage Authority that are still in force are contained in the District General By-law which was sanctioned on March 29, 1958, by Order in Council P.C. 1958-474, as amended on March 25, 1965, by Order in Council P.C. 1965-561 (Ex. 22).

The purpose of the 1958 revision was to bring the By-law up to date in terms of form, draftsmanship and content with the By-laws of other similar Districts. This revision resulted in stereotyped regulations which, as will be seen in Chapter C, conform neither to local requirements nor local practice and, therefore, are not followed, either because they are not applicable or not practicable.

The main features of the organization provided by the General By-law are as follows (for comments *vide* references in brackets):

- (a) The service is fully controlled by the Authority (Part I, pp. 73 and ff.).
- (b) A six-hour ETA is required from ships requiring a pilot (Part I, p. 232).
- (c) Control is exercised by the Pilotage Authority through its Secretary and the Pilot Master.
 - (i) The main function of the Secretary is purely clerical, i.e., recording the minutes of the Authority's meetings, billing and collecting pilotage dues and attending to financial operations, including bookkeeping; he is also purported to possess limited disciplinary powers.
 - (ii) The Pilot Master's duties are operational. He is responsible for despatching, which is normally to follow a tour de rôle, and for exercising the necessary surveillance over the pilots. To enable him to discharge his duties, the pilots are required to report to him and keep him informed of their whereabouts as well as shipping casualties and other matters that may affect pilotage, e.g., displaced buoys and altered channels.

Although the Pilot Master is a licensed pilot and is required by regulation to take occasional assignments in case of a shortage, he is not a representative of the pilots but a servant of the Pilotage Authority who appoints him and whose orders he must carry out. His remuneration is an equal share in the pool, but he is obliged to maintain at his own expense an office with a land telephone in the vicinity of the pilot station. (Part I, C.4).

- (d) No regulations were made to cover the compulsory payment of dues, with the result that the relative statutory exemptions retain their full application, while small ships under 250 tons, such as yachts and other small craft that are not rowboats, are subjected to compulsory payment, unless they are of dominion registry (Part I, pp. 227 and 228).
- (e) The pilots' status is that of quasi-employees in that they can not perform pilotage except as directed by the Pilot Master, or other officer of the Pilotage Authority, and also because their remuneration is a salary which takes the form of a share in the pool, sharing being on the basis of availability for duty. The regulations provide for annual leave of absence and sick leave (Part I, pp. 74 and ff. and p. 249).
- (f) Pilots are recruited through an apprenticeship system or, in the absence of apprentices, from qualified mariners. The only qualifications an apprentice requires to become eligible for a licence as a probationary pilot are: physical and mental fitness, age between 18 and 35, three-year apprenticeship performed by accompanying pilots on duty and fulfilling other duties related to pilotage, successfully passing an examination as to competency before the District Board of Examiners, and at the time of licensing to be a Canadian citizen resident in the County of Bonaventure west of the Grand Cascapedia or in the County of Restigouche (Part I, p. 251). No minimum marine certificate of competency is required (Part I, p. 494). If no apprentices are available, anyone possessing a certificate of competency "not lower than that of towboat master" and meeting the conditions required of an apprentice (except apprenticeship) may be licensed as a probationary pilot. In this case, actual experience in the District waters is not a prerequisite.¹

¹ General sea experience has not been required since 1965. Until then, a candidate was required to have had not less than three months' deck service in the coasting or foreign trade of Canada. It would appear that the 1965 amendment, which also raised the age limit for apprenticeship from 30 to 35, was designed to accommodate the sole apprentice in the District and to relieve him of the prerequisite of experience at sea.

- (g) A two-year probationary licence is the first one issued and, if the holder's service is satisfactory, it is followed by a permanent licence upon payment of a \$10 fee. A probationary pilot's remuneration is left to the discretionary administrative decision of the Pilotage Authority (Part I, pp. 263-265).
- (h) Pooling is effected monthly when the net total of pilotage dues earned is shared equally between the Pilot Master and the pilots. Expenditures authorized by the General By-law consist of the salary of the Secretary, fixed at 3% of the gross receipts of the District, the remuneration of the probationary pilots as fixed by the Authority (Part I, p. 263), the reimbursement of the pilots' expenses incurred in the course of their duties, and other expenses for conducting the business of the District that are approved by the Authority (Part I, p. 112). Apprentices are not remunerated by the Authority. There is no Pilot Fund or Pension Fund nor any authority to keep a reserve for anticipated expenditures. The Pilotage Fund must be completely disbursed at the end of each month.
- (i) Although the By-law dealing with pooling does not contain the usual provision that time on annual or sick leave shall count, it is apparent that the intention is that the same rule should apply, by reason of the proviso contained in subsec. 23(2) dealing with up to six months' permissible leave of absence without pay. Since there is no similar qualification with regard to 21 days' annual leave, or sick leave up to a maximum of one year if caused by an injury incurred while on duty, the implication is that such leave shall be with pay, i.e., with pooling rights. The By-law does not provide for sick leave with half pay.
- (j) The Pilotage Authority and the Secretary are purported to possess disciplinary powers. However, an accused pilot has no right to appear personally before either of them but must make his defence before the Pilot Master or in writing to the Authority (vide Part I, C. 9).
- (k) A pilot vessel must carry a licence issued by the Authority on an annual basis for an initial fee of \$5.00 and an annual renewal fee of \$1.00, the only licensing requirement being suitability of the vessel. A certificate of seaworthiness from the Department of Transport is not required (Part I, pp. 307 and ff.).
- (l) The tariff provides rates for voyages, movages and pilot boat services. There is no indemnity charge of any kind except those provided in secs. 359 and 360 C.S.A.
- (m) The voyage rate is composed of two variable components, draught and tonnage. The basic charge, irrespective of the location of

the port or loading station of destination, is a uniform \$2.60 per foot of draught and 2¢ per N.R.T. both inward and outward. When a ship calls at one or more ports or loading stations within the District during an inward or outward trip, each part of the trip after the first one calls for a reduced charge of \$1.00 per foot of draught plus the 2¢ tonnage charge.

- (n) A movage, which is defined in the By-law as "moving of a vessel within a harbour" (Part I, p. 220), calls for a \$15 flat rate for a movage from one anchorage to another. For any other movage, the rates are expressed in the form of a scale based on tonnage for ships up to 600 tons. For ships over 600 tons, there is a flat rate for specified movages. For this purpose, Campbellton and Restigouche are considered a single port. A surcharge of 50 per cent applies to all movages "when the removal distance exceeds four miles".
- (o) There is a flat rate of \$15 each time a pilot boat is used to embark or disembark a pilot.

2. HISTORY OF LEGISLATION

Prior to Confederation the waters of the present Restigouche River District came under the jurisdiction of the province to which they belonged. On the Quebec side there was no applicable legislation but on the New Brunswick side pilotage first came under the 1786 statute "An Act for Regulating Pilots" (26 Geo. III c. 52) and its amendments. (For details, vide Section Two, pp. 34 and ff.)

After Confederation up to 1935, pilotage organization continued to be based on electoral districts. The result was a very confused state of affairs in the confined waters of the Restigouche River because, although the river afforded a common approach to the ports and harbours on both sides, each bank formed a separate district.

The first District created was the "Pilotage District for Restigouche in the Province of New Brunswick". It retained the pre-Confederation arrangement based on electoral boundaries. Its limits comprehended "all the Ports and outports within the County of Restigouche", by Order in Council P.C. 643 of July 21, 1876 (Ex. 1510(d)). The payment of dues was made compulsory.

This District was of the merger type; it comprised only the ports and outports on the New Brunswick side of the Restigouche River and on that part of the Chaleur Bay south coast within the County of Restigouche, which ports and outports were not interconnected by any pilotage waters, the waters of the Restigouche River and of the Chaleur Bay not being part of the District.

The Quebec side of the river was established as a District by Order in Council P.C. 759 of April 3, 1889 (Ex. 1510(e)) as the Pilotage District for the County of Bonaventure in the Province of Quebec. Its limits extended to the north side of the Restigouche River and to most of the north shore of Chaleur Bay, i.e., from Point Maquereau seven miles east of Port Daniel to the head of the tide at "Bourdon" (no doubt Pointe à Bourdeau) in the Restigouche River, a distance of about 90 miles of coastline. Two days later, a separate Order in Council, P.C. 760 dated April 5, 1889 (Ex. 1510(f)), appointed three persons members of the Pilotage Authority, but neither Order in Council made the payment of dues compulsory for the new District.

The District on the Quebec side was of the same nature as the New Brunswick District, i.e., a merger type of separate port pilotage services, excluding the waters of the Restigouche River.

Difficulties ensued when, in 1896, the Pilotage Authority for the District of Restigouche purported through its By-law to extend the limits of its District to include all that part of the Bonaventure District west of Black Point, a point facing the south shore limit of the District. The intended result was to create a single District out of the waters of the Restigouche River and the head of Chaleur Bay, a distance of some 35 miles. The By-law also purported to impose the compulsory payment of dues to the new territory so annexed. The new By-law, despite these obvious irregularities, was approved on April 1, 1896, by Order in Council P.C. 1031 (Ex. 1510(i)). Complaints quickly followed by inhabitants of Bonaventure that vessels entering ports within the County of Bonaventure were obliged to pay pilotage dues to pilots of the Restigouche District. The Minister of Marine and Fisheries, realizing that the complaints were well founded and that the By-law provisions interfered with the limits of the Pilotage District of the County of Bonaventure, recommended that these limits be repealed and the previous limits substituted. In P.C. 1131 of May 9, 1898, the Governor in Council cancelled *proprio motu* the District By-law provision concerned and redefined the limits of the Pilotage District of Restigouche as they had been before, i.e., to embrace all the navigable waters, harbours, bays and river in the County of Restigouche (Ex. 1510(j)). The 1896 By-law provision was obviously *ultra vires*. The procedure followed in 1898 was simply a way of rectifying the situation without having to request the Pilotage Authority to amend its By-law.

The District limits remained unchanged until the two Districts were amalgamated in 1935.

The various By-laws made by the Restigouche Pilotage Authority are particularly interesting because they contain the origin of a great number of present day regulations.

The By-law approved by the Governor in Council by P.C. 158 dated March 1, 1877, was entitled "Rules and Regulations for the Government of Pilots". Its main features were (Ex. 1510(g)):

- (a) It was clear that organized pilotage existed prior to Confederation in that continuity was provided by recognizing the right of the pilots already holding a branch to receive a licence for the new District.
- (b) The free enterprise system prevailed. There was neither despatching nor pooling, and pilots competed at the boarding station for incoming ships, collecting and retaining the dues they earned.
- (c) Pilots were recruited by an apprenticeship of not less than three years' duration to be served under a pilot, to whom the apprentice was to be indentured, and on board a licensed pilot boat with the approval of the Pilotage Authority. Pilot boat service was provided by the pilots themselves, the ownership of not less than half a pilot vessel of not less than five N.R.T. being a prerequisite to act as pilot. No doubt these regulations caused too drastic a change and by an amendment made a few months later (Order in Council P.C. 591 of June 25, 1877) (Ex. 1510(h)) they were suspended for one year.
- (d) The rates were based on draught and distance, the price per foot draught varying with the port of destination, e.g., \$1.00 per foot draught for Dalhousie and \$1.50 for Campbellton. The rates for movages were in the form of a scale based on tonnage, plus a 50 per cent surcharge if the movage extended over four miles. These provisions are still found in the present tariff.
- (e) Pilots were required to furnish to the Secretary details of the services they had rendered and the dues they had collected, but this was for the Pilotage Authority's information only.
- (f) There were provisions regarding the licensing of pilot boats. They were to be not less than five tons and it had to be demonstrated annually that they were seaworthy. A licence was for one year only for a fee of \$5.00. If at any time a pilot vessel was found to be unseaworthy, the licence would be suspended. In addition, vessels were given numbers for identification.

This By-law was amended twice before it was superseded by the 1896 By-law already quoted (Ex. 1510(i)). It is apparent that the main purpose of the new By-law was to add the north side of the Restigouche River and the opposite north coast of Chaleur Bay to the previous District limit on the New Brunswick side. In addition to describing what was purported to be the new limits, the By-law provided that residents of both Bonaventure and Restigouche Counties could become pilots. New rates

were established for the ports and loading stations situated in the territory so annexed, e.g., the dues for pilotage to Oak Bay were fixed at \$1.25 per foot of draught. It is quite possible that the Bonaventure District was somewhat inactive and that there was no longer a licensed pilot there, thus causing a demand for the Restigouche District to provide pilots. In fact, it was only realistic that the territory of a Pilotage District should correspond to the realities of navigation and, therefore, should comprise a geographical area rather than being governed by an electoral division. However, the method used was wrong—this subject-matter was beyond the jurisdiction of the Pilotage Authority to make regulations and the approval given to any of its regulations by the Governor in Council did not change the nature of the By-law and could not make it valid. The proper procedure was followed in 1935 when the two Districts were legally amalgamated (Ex. 1510(n)).

The other changes were:

- (a) Apprenticeship remained three years but two months' sea experience as seaman on board a square rigged vessel was added as a prerequisite for candidates.
- (b) The feature of reduced rates for consecutive trips within the District was introduced, the charge for trips after the first being 50¢ per foot of draught. This feature is still retained.
- (c) In case qualified apprentices were lacking, any person found competent by the Pilotage Authority could be licensed as pilot. This is another feature still retained in the present By-law.
- (d) A Secretary-Treasurer was appointed at a salary of \$25 per annum, which, together with all other District expenses, was to be paid out of licence fees. The work of the Secretary was merely clerical and, at that time, he did not have the responsibility of collecting pilotage dues which continued to be collected by the pilots themselves. The pilots, except for the renewal fees for their licences and pilot boat licences, made no payments to the Pilotage Authority.

This By-law was amended by P.C. 920 of June 15, 1903 to provide a surcharge of 1¢ per N.R.T. on steamships, a feature which is still included in the tariff (Ex. 1510(k)).

On September 1, 1903, the pilots were required to contribute out of their pilotage earnings toward the payment of District expenses. This amendment provided for the appointment of a new Secretary-Treasurer and fixed his salary at 3 per cent of the gross receipts and earnings of the pilots. The collection of the pilotage dues was made the responsibility of the Secretary who had to pay to each pilot the dues he had earned less the 3 per cent deduction. There was neither despatching nor pooling. This method of remunerating the Secretary-Treasurer is still in effect.

By order issued by the Governor in Council on February 9, 1935 (P.C. 339, Ex. 1510(a)), the two former Districts of Bonaventure County and Restigouche County were amalgamated and the territory of the new District was restricted to the Restigouche River, its seaward approaches and the various ports situated on its banks. The seaward limits were defined by the same land points that are still in force, i.e., Miguasha Point on the Quebec side and Little Belledune Lighthouse on the New Brunswick side. This reduced the length of the District by some 25 miles on the Quebec side and some 35 miles on the New Brunswick side. The payment of dues was made compulsory and the Pilotage Authority remained a local commission.

One month later, the Pilotage Authority of the new District submitted a new By-law which was approved by the Governor in Council by P.C. 586 dated March 7, 1935 (Ex. 1510(n)). This By-law was amended several times, mainly to increase the rates (Exs. 1510(o), (p) and (q)), before it was superseded in 1958 by the General By-law now in force.

The principal change introduced by this General By-law was controlled pilotage using the system that still prevails (vide pp. 353-356) and, hence, the abolition of free enterprise.

Order in Council P.C. 3718 of July 24, 1951 (Ex. 1510(r)) extended the District limit on the north shore of Chaleur Bay seaward for a distance of approximately 10 miles to Maria Cliffs to include the port of Carleton, which was not provided with pilotage service and where it was anticipated there would be sufficient shipping to justify the change. However, on November 22, 1957, by Order in Council P.C. 1957-1562, the northern limit was re-established at Miguasha Point (Ex. 1510(b)). Complaints had been received from Carleton industrial interests that the port was not efficiently served by the Restigouche District. At that time, it was suggested by the Department of Transport that the southern limit of the District also be relocated 16 miles westward from Little Belledune Point to Parant Point. While the Pilotage Authority agreed to the change on the north side, it objected to the proposed change on the south side because that section of the New Brunswick coast included a number of ports where loading was actively carried on at that time (Ex. 1510(t)). Consequently, the southern limit was left unchanged.

Chapter B

BRIEFS

While no briefs were submitted at the time of the Commission's hearing, the pilots presented a short memorandum (Ex. 301) outlining what they considered the District's major navigational problems (vide p. 366):

- "1. Several Buoys not in position.
2. Need a proper Fairway buoy established at Pilot station so that vessels arriving at entrance may safely anchor in event pilot vessel is not at the station.
3. Existing buoys are too small and especially so in view of the large vessels due in the port to handle concentrate cargoes.
4. Bon Ami light is next to impossible to locate from seaward due to mass of lights of the town directly behind lighthouse.
5. Old lighthouse on old Gov't. wharf taken out of service thus causing loss of necessary range for entering and leaving south channel. Pilots now must use small flasher type light of their own in position of old lighthouse. Request new installation.
6. Channel between Douglas Island and Middle ground too narrow for large deep draught vessels. Request dredging of north side of channel to give additional 100 feet width.
7. Ferry from Dalhousie to Maguasha is a problem in that she is a crossing vessel at all times in a restricted manoeuvring area.
8. A channel across the middle ground west of International Paper Company wharf would provide safe entry and exit to both wharfs.
9. Safe draught to port of Campbellton is constantly being argued and we believe our only authority to be the latest soundings as provided by Dept. of Public Works.
10. Turing basin at Campbellton is not wide enough nor deep enough in our opinion and should be dredged to at least the same depth as that alongside the wharf.
11. East end of Campbellton wharf almost impossible to locate on dark night. Request light be established on corner.
12. Intermediate ranges on Battery Beach have been on the ground for a number of years and have no value in this state. Request they be re-erected.

13. Buoy's number 10G and 12G are in reverse numerical position. Request they be corrected.
14. Tide tables for these ports as issued by the Canadian Hydrographic Service now call for use of Pointe St. Pierre as Reference Port rather than Father Point as was used for many years. We find that Point St. Pierre has been out as much as one hour and ten minutes on the actual turning of the tide whereas Father Point is as close as can be expected. We have continued to use Father Point and have run into arguments with various Masters on this matter.
15. Tow boats in the river with large rafts of pulpwood are encountered during most of the season but close cooperation between the Master of these tow boats and the pilots has been the answer to this situation."

The pilots also asked what the possibilities were of their pilot boat being supplied with a V.H.F. radiotelephone.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

While the legal limits of the District on the Quebec side extend only to the mouth of the Restigouche River, on the New Brunswick side they run some 20 miles farther eastward to include the south shore of Chaleur Bay up to Little Belledune light. The port of Belledune, a National Harbours Board port created in 1967, is situated between the Districts of Restigouche and Bathurst, two and a half miles east of the southeast limit of the Restigouche District and 11 miles west of the District of Bathurst. It is not included in any Pilotage District.

The harbour of Belledune and its facilities are still in the process of completion. The new harbour will be enclosed by two breakwaters and will be open to navigation the year round. By Order in Council P.C. 1967-708 dated April 13, 1967, the new harbour was made the responsibility and property of the National Harbours Board to which the harbour assets were transferred from the Department of Public Works. The Dominion Bureau of Statistics states that in 1967 five vessels with an aggregate net tonnage of 24,264 tons called at the port, and in the first semester of 1968 there were five arrivals with an aggregate net tonnage of 20,609 tons. The main industry at present is Belledune Fertilizer Limited. It is a man-made port which does not appear to present any particular navigational difficulties. The approach is not restricted and deep-draught vessels can be accommodated readily. Large vessels going to and from Belledune at present employ pilots from the adjacent Pilotage District of Bathurst. A small privately owned tugboat is used to assist in berthing and unberthing (Ex. 1510(v)).

In practice, the District is limited to the Restigouche River and the immediate area outside the mouth of the river, about two miles east from Dalhousie between Bon Ami Rocks and Miguasha Point light buoy, which area serves as the boarding station. Between there and the legal limit at Little Belledune light no pilotage is being performed now and there is no landing station of any importance.

The retention of this part of the Chaleur Bay coast in the District can be explained only on the basis of historical sentiment and automatic resistance to change. It is a relic of the early days when Districts in the Maritime Provinces were not defined to meet specific pilotage needs but

merely to designate the area over which the Pilotage Authority's licensing jurisdiction extended. In keeping with pre-Confederation practice they generally coincided with the limits of electoral divisions. Such Districts were somewhat of the same nature as the merger type Districts which the Commission is now recommending in certain instances (vide p 24). The difference is that no distinction was made at that time between potential and actual jurisdiction, the Pilotage Authority's function was limited to licensing and its jurisdiction extended to all the separate port pilotage services that existed, or could develop, within the District limits. This type of organization did not conform to the underlying principles of the 1873 Pilotage Act whose general provisions presupposed port pilotage only and the creation of a separate District for each service of this type (Part I, pp. 49 & ff.). Such an organization soon proved unworkable and the county type Districts were reduced, in fact (p. 158) if not in law (p. 265), to strictly port Pilotage Districts. Nor does this type of organization meet the modern criteria for the establishment of Pilotage Districts and their limits (vide Part I, Gen. Rec. No. 8). The merger type District that is now recommended in certain cases is merely a practical compromise to be applied to an area containing a number of relatively small pilotage services whose limited importance does not justify the creation and expense of a separate Pilotage District.

This section of the Chaleur Bay coast became part of the District when it was first created in 1874 on the basis of the electoral district of Restigouche. It had been retained ever since, despite the fact that there had been no pilotage. When the Department of Transport realistically recommended in 1957 that the District be limited to the Restigouche River (vide p. 360), the Pilotage Authority immediately objected on the pretext that important maritime activities were being carried out in that region. Apparently this statement was not investigated and the fact that the Pilotage Authority opposed the change was sufficient to kill the proposal.

COMMENTS

It is considered that the seaward District limits should be amended to correspond to the factual situation, i.e., should not extend further than the mouth of the river. The area between Miguasha Point light buoy and Bon Ami Rocks buoy should be defined as the boarding area.

Because there has been no constant pilotage traffic between Bon Ami Rocks and Little Belledune Point for a number of years (Ex. 1510(z)), the District pilots can not be said to have the necessary competence to pilot there. They lack the constant practice which is necessary to maintain *expertise*. The gravity of the situation is compounded by the fact that vessels are induced to employ pilots on account of the compulsory payment system which also applies to that area.

(2) PHYSICAL FEATURES

Up to the point where navigation for ocean and coastal shipping terminates, the Restigouche River varies in width from three miles to half a mile. From the entrance between Bon Ami Rocks on the south shore and Miguasha Point on the north shore, which are two miles apart, the navigable channel of the river winds westward for sixteen miles to Campbellton. A bridge, constructed for vehicular traffic, joins Campbellton with Cross Point, P.Q., on the north shore.

At the south western seaward entrance to the river lies the port of Dalhousie and from there for fourteen miles to Campbellton the channel is defined by lighted and unlighted buoys. From Oak Point to Campbellton the 75-foot channel is marked by range lights. In this shallow part the depth is reported to be maintained at 15 feet at low water, but vessels of moderate draught can proceed during periods of high water. Spring tides rise $10\frac{3}{4}$ feet and neaps 8 feet. The flood and ebb of tidal streams do not exceed two knots.

During the winter months the upper reaches of the river freeze over, and the navigation season at Campbellton is from May 1 to December 20. The port of Dalhousie is kept open the year round with the occasional assistance of ice-breakers.

Miguasha Point is the quarantine station for the region. Ship-to-shore communication from vessels in Chaleur Bay is through Grindstone radio station (VCN). It is reported that communications with this station are poor in the vicinity of Campbellton.

(3) PRINCIPAL HARBOURS

Dalhousie and Campbellton are the principal ports and both are Ports of Entry. Dalhousie handles most of the ocean shipping, while coastwise shipping dominates at Campbellton (see *Maritime Traffic*).

Dalhousie and Campbellton were proclaimed Public Harbours by the same Order in Council, P.C. 640 of May 30, 1873; their limits were not defined and have not been defined since.

The Canadian International Paper Company's large pulp and paper plant is located at Dalhousie. There are two main wharves which accommodate large ships: (a) the new Department of Transport wharf with a length of 606 feet and depth alongside of 34 feet at low water; (b) the Canadian International Paper Company's wharf with a berthing length of 500 feet and a depth of 26 feet alongside at low water.

There are ample secure anchorage grounds, the best being east of Middle Ground, about one mile in distance from the port. Tugboats are not available and vessels berth and unberth under their own power.

The port of Campbellton is situated on the south bank of the river at the head of navigation about 16 miles from its junction with the Baie des Chaleurs. It is an important lumbering centre.

The only large wharf is owned by the Department of Transport. It is 1,450 feet long and lies parallel with the river. There are 580 feet of berthing space at the eastern end with 17 feet depth alongside at low water and at the western end 13 feet depth at low water. The wharf has berthing space for five medium sized vessels. Vessels load and discharge from and to railway cars as well as lighters alongside.

The anchorage ground is below the Department of Transport wharf. Although small tugs are available, they are not necessary for handling powered vessels.

(4) AIDS TO NAVIGATION

At the southwestern entrance to the Restigouche River a light is exhibited on Bon Ami Point at an elevation of 49 feet. About 13 cables due east of this light is Miguasha Spit, marked by a light buoy with a radar reflector. In between these points flows the approach channel of the Restigouche River and the near approaches to Dalhousie. About 8 cables Northwest from Bon Ami Point light lies Dalhousie Island and on its northern point a light is exhibited at an elevation of 63 feet. Between this light and the southern end of Middle Ground, marked by a buoy, a short approach channel about 500 feet wide leads to the wharves at Dalhousie. At the time of the Commission's hearing the pilots expressed the view in their evidence that, because larger vessels now use the port, the approach channel should be widened and the buoys replaced by larger ones. Leading lights are exhibited on the wharves and no unusual difficulties are encountered berthing and unberthing vessels.

The navigable channel of the river between Dalhousie and Campbellton is narrow but well marked by lighted, unlighted and spar buoys. Leading lights are situated at Oak Bay, where the channel is narrow, and also at Campbellton. Distinctive land features such as Mount Escuminac rising above the bay of that name, and Sugarloaf Hill near Campbellton provide excellent marks for guidance. At the close of navigation in winter the buoys are removed and replaced in the spring.

On February 2, 1967, the Department of Transport reported that the various points regarding aids to navigation raised by the pilots in their memorandum to the Commission (p. 361) have been attended to and that they have received no complaints (Ex. 1510(s)).

(5) MARITIME TRAFFIC

Vessels that ply the District comprise mostly coasters, tankers and medium-sized ocean-going cargo vessels.

Coastwise traffic predominates at Campbellton, as shown by shipping statistics. Coastal vessels make occasional calls at Oak Bay, three miles east of Campbellton, and at Pointe à Fleurant, about two miles north of Dalhousie. Tugboats towing large rafts of pulpwood, which ply between Campbellton and Dalhousie, create an occasional navigational hazard.

Ocean-going cargo vessels predominate at Dalhousie. The ferry operating between Miguasha and Dalhousie has to be carefully watched in case she crosses dangerously close to inbound and outbound vessels in the restricted manoeuvring area off the wharf at Dalhousie.

The following shipping statistics provided by the Dominion Bureau of Statistics (Ex. 1483) show the total number of vessels of 250 net registered tonnage and over that arrived at Campbellton and Dalhousie in each of the nine years from 1959 to 1967, their aggregate net tonnage and the tonnage of foreign and coastwise cargo handled.

Year	Port	Arrivals	Net Tons	Cargo Handled (Tons)	
				Foreign	Coastwise
1959	Campbellton.....	26	43,164	22,013	26,960
	Dalhousie.....	54	135,780	165,207	6,776
	Total.....	80			
1960	Campbellton.....	25	40,411	33,283	23,903
	Dalhousie.....	68	185,170	213,361	Nil
	Total.....	93			
1961	Campbellton.....	30	53,300	41,179	23,492
	Dalhousie.....	79	239,541	227,096	Nil
	Total.....	109			
1962	Campbellton.....	24	35,885	20,908	24,702
	Dalhousie.....	71	214,676	225,422	Nil
	Total.....	95			
1963	Campbellton.....	31	50,876	20,328	20,125
	Dalhousie.....	94	252,953	273,505	Nil
	Total.....	125			
1964	Campbellton.....	30	78,049	14,302	40,425
	Dalhousie.....	113	417,115	504,404	Nil
	Total.....	143			
1965	Campbellton.....	29	48,669	18,708	34,952
	Dalhousie.....	91	404,798	704,716	Nil
	Total.....	120			
1966	Campbellton.....	23	36,542	16,030	33,492
	Dalhousie.....	88	431,631	728,150	4,646
	Total.....	111			
1967	Campbellton.....	24	59,116	11,891	43,779
	Dalhousie.....	103	440,774	673,875	7,196
	Total.....	127			

Whereas traffic to Campbellton is light and fairly constant, there is comparatively more traffic at Dalhousie where the bulk of foreign cargo is handled. The average net tonnage of vessels calling at Campbellton in 1959 was 1,660 tons compared with 2463 tons in 1967, whereas at Dalhousie the average was 2514 tons in 1959, 4905 in 1966 and 4279 in 1967. Although no coastwise cargo is shown at Dalhousie for the years 1960 to 1965, this does not mean that no such cargo was handled there during those years but that the vessels so engaged were under 250 NRT.

2. NATURE OF PILOTAGE SERVICE

Dalhousie is close to the boarding station and pilotage there presents no unusual navigational difficulties. However, Pilot D. H. Mealey testified that the approach channel between Dalhousie Island and Middle Ground was too narrow for the larger ore carriers in excess of 90 feet in breadth and with a draught of 31 to 32 feet. He suggested that the north side of the channel be dredged to bring it to 350 feet in width.

Vessels bound for or from Campbellton are restricted to a maximum draught of $22\frac{1}{2}$ feet and proceed only at periods of high or near high water. For the 16 miles of the river from its mouth to Campbellton navigational problems common to river pilotage prevail. For deep-draught vessels the density of the water from salt to fresh and vice versa affects their draught, which is an important factor in navigating the upper reaches of the river. Such vessels endeavour to keep to the middle of the channel. River traffic, especially towboats towing rafts of pulpwood, presents difficulties. A serious accident resulting in a sinking would effectively block the channel and, hence, the port.

It was reported that all ships plying these waters (with the possible exception of small craft) take pilots, whether exempt or not. This is corroborated by the number of assignments performed by the pilots as compared to the number of ships over 250 NRT which are reported in D.B.S. statistics as having called at District ports.

COMMENTS

The pilotage requirements for Dalhousie do not compare with those of the rest of the District to the west. It is strictly port pilotage with no special problems except those created by the increasing size of ships.

In contrast, assignments to Campbellton are longer and made more difficult by the hazards of river pilotage. These hazards are increasing because larger ships are using the channel to its near maximum capacity. On

the other hand, its navigation is made less difficult by the absence of strong tides or currents.

The only common factor in the two sectors is the boarding area. Therefore, in theory there could be two separate services. However, this is not indicated in view of the present limited demand in both areas, which two pilots can easily handle. If two services were established, it would be necessary to double their number, i.e., two pilots for each area to ensure constant availability.

There is no reason for imposing any form of compulsory pilotage because classification as a public service as defined in Part I, p. 509 can not be justified. Navigation is not complicated and the interest of the public in general would not be seriously affected if a serious shipping casualty were to occur anywhere within the District.

3. ORGANIZATION

The function of Pilotage Authority is entrusted to a Commission of five members, all recruited locally. Apparently no Commissioner's tenure of office in the District has ever been troubled by partisan politics and, in practice, appointments have lasted for long periods, e.g., the late Captain R. G. Edwards had been in office 20 years when he died in 1967, and the Secretary-Treasurer, Mr. A. F. Carr, had been 51 years in office when he was replaced in 1965. The Commission does not hold regular meetings but only when occasion demands.

The actual operations of the District and of the service are the responsibility of two delegates of the Pilotage Authority, the Secretary-Treasurer, whose duties are merely clerical, and the Pilot Master, whose responsibilities are operational.

The Secretary-Treasurer keeps the minutes of the Commission's meetings, attends to the Pilotage Authority's correspondence and clerical work involved in licensing, reappraisal and discipline, maintains statistics and prepares the annual report the Authority is required by sec. 332 C.S.A. to send to the Minister of Transport. He is also purported to have limited disciplinary powers. Most of his time is occupied with financial administration, collecting dues, paying expenses and arranging the sharing of the pool. This aspect of his work will be studied later.

The Pilot Master's function is general direction of the pilots and the pilot boat; he is also expected to share the workload equitably among the pilots. This latter responsibility will also be studied later.

When controlled pilotage was instituted in 1935, the function of Pilot Master was created to avoid increasing the workload of the Secretary-

Treasurer. Apart from the question of the illegality of controlled pilotage under the present legislation (Part I, pp. 68 & ff.), this is considered an unnecessary, expensive position which should be abolished. In larger Districts, the despatching and surveillance functions are normally exercised by the person in charge of clerical work, namely, the Secretary or the Superintendent (or Supervisor). There is no reason why this could not be done in smaller Districts as well. Expenses are increased because, except in an emergency, the Pilot Master is not obliged to take any assignment himself, and still receives a full share of the pool. The solution is to combine the clerical and operational responsibilities and remunerate the incumbent accordingly.

As will be seen later, the regulations dealing with the function of Pilot Master are a dead letter. They do not meet the present requirements of the service and, in fact, are not followed. The title *Pilot Master* merely means the senior pilot. When there are only a few pilots, including the Pilot Master, such a function is not warranted. In this District he shares assignments equally with the other pilot, and the office and telephone expenses that, according to the By-law are to be borne by him, have become District operating expenses which are paid out of District earnings.

4. PILOTS

The prerequisites set out in the regulations to become a pilot are minimal. In addition, the prescribed licensing procedure is not followed, probably because it is unnecessarily involved in the local context.

According to the regulations, pilots are normally recruited through a three-year apprenticeship system. If there is no apprentice who meets the qualifications when a vacancy occurs, any mariner who holds at least a towboat Master's certificate and meets the requirements other than apprenticeship may be licensed as a probationary pilot.

Neither a minimum marine certificate of competency nor sea experience to ensure basic qualifications and skill is required of an apprentice. Up to 1965, an apprentice was required to obtain sea experience as a deck officer in the coasting or foreign trade of Canada, but this requirement was deleted (amendment sanctioned March 25, 1965) and, at the same time, the age limit for apprentices was raised from 30 to 35. These changes were undoubtedly made to legalize the acceptance on Feb. 15, 1965, of Mr. Fred Bourdage as an apprentice. He was considered a suitable candidate but was then 35 years of age and had had no opportunity to serve as a deck officer (Ex. 1510(bb)).

According to the By-law, an apprentice is expected to acquire the necessary navigational knowledge and skill merely by accompanying pilots and by performing such other duties related to pilotage as may be required by the Authority. The By-law requires that an examination on general and local knowledge be carried out by a Board of Examiners consisting of three members appointed by the Authority. The first licence is to be probationary for two years followed by a permanent one.

However, the local practice is totally different as explained by the Secretary of the Authority, Mr. J. C. MacLauchlan, in a letter dated Nov. 27, 1968 (Ex. 1510(w)). Apprentices are recruited and trained and then licensed as pilots as follows:

- (a) There are always many applicants because they believe the pilots have easy, well remunerated work. Most applicants withdraw when they learn that a three-year unpaid apprenticeship is a prerequisite. The names of those who are still interested are placed on a waiting list.
- (b) When there is a vacancy for an apprentice, the pilots recommend to the Authority the applicant on the waiting list who, in their opinion, is most likely to be successful.
- (c) If the recommended candidate is accepted, he begins his apprenticeship which is served as follows:
 - (i) The first year, he operates the pilot vessel and becomes acquainted with the District, i.e., tides, currents, buoy positions, soundings, land marks, true and magnetic courses, ice conditions, radar operation and interpretation.
 - (ii) The second year, he accompanies the pilots in as many ships as possible and gains experience in ship handling. He is gradually given opportunities to pilot ships through given sections of the river under the supervision of a pilot and is allowed to anchor ships and plot positions.
 - (iii) During his third year, he is given more responsibility and longer pilotage trips as well as experience in berthing and unberthing under supervision. He is permitted to anchor vessels and assist icebreakers. He is also required to share in maintaining and repairing the pilot vessel.
- (d) Upon completing his three years of training and demonstrating to the District pilots his competence and skill to become a pilot, he is recommended for a licence. If the recommendation is accepted by the Authority, he is granted a permanent licence without examination or other formality and takes assignments as directed by the Pilot Master.

Mr. Carr, the previous Secretary, testified to the same effect and stated that a licence was issued to an apprentice who had completed his training merely upon the favourable recommendation of the pilots. He added that on one occasion the Pilot Master was the sole examiner.

In 1963, Pilot D. H. Mealey stated that two pilots were sufficient to handle the workload 90 per cent of the time, but that a third pilot was needed during the early and late periods of the shipping season. As will be seen later, the present workload did not justify an additional pilot. However, their number was increased to three Feb. 1, 1968, when Mr. Fred Bourdage was granted a permanent licence after three years' apprenticeship. A Board of Examiners was not convened. The licence was issued by the Authority on the recommendation of the Pilot Master (Ex. 1510(bb)).

Since the three pilots are comparatively young and their workload is light, it is unlikely that it will be necessary to issue another licence for some years. Hence, there is no apprentice pilot in the District at the present time (1969). No doubt it is felt locally that an apprentice should not be taken unless it is reasonably sure that he can be licensed shortly after he completes his training, especially since apprenticeship is unpaid.

Mr. MacLauchlan added that this Pilotage Authority would hesitate to change the method of apprenticeship since it ensures that only dedicated persons seriously considering pilotage as a profession become candidates on account of the sacrifice apprenticeship entails. In addition, the need for pilots is very limited in the District.

There has been no serious casualty for the last 15 years. Four groundings occurred, caused by strong winds and unusual weather conditions, but without damage to the ships involved.

COMMENTS

The training to which an apprentice is subjected is most satisfactory. The practical difficulties so often encountered are overcome because there is more than one pilot and they take turns relieving the apprentice of his obligation to man the pilot vessel so that he may accompany pilots on board and acquire actual experience piloting. This is a realistic approach to the problem which should be adopted in other small Districts. It is considered, however, that the requirements should be detailed in the regulations in order to be binding on all concerned. Since regulations are easy to change, there would be no difficulty keeping them in line with changing local conditions and requirements.

The licensing practice, however, leaves something to be desired and may give rise to abuses. It is agreed that the formal procedure stipulated in the regulations is not warranted where there are only a few pilots but it is essential to establish a routine of disinterested appraisal. It is a most dangerous procedure to permit a candidate's competency to be appraised solely by pilots, especially when, on account of their small number, they are closely associated with the candidate during his apprenticeship and are responsible for his training. The method adopted in Caraquet appears particularly suitable for small Districts. Instead of a Board of Examiners, the Pilotage Authority ascertains the candidate's fitness by obtaining opinions both from the pilots and from one qualified independent source such as an examination carried out concurrently or independently by a group of Master Mariners, one of whom must be acquainted with local navigational conditions. The candidate is also examined for physical fitness, including eyesight and hearing, by one or more physicians who report their findings to the Pilotage Authority.

If the procedure set out in the regulations is not followed, a licence may be invalidated. Therefore, the governing provisions should be amended to provide a realistic procedure which is adhered to.

Although navigation in the District is not difficult with the navigational aids available, and the ships piloted are limited in size by the nature of the channel, many of them proceed at their maximum permissible draught. In such circumstances, which may be compounded by adverse weather conditions, skill in ship-handling is paramount. However, the service now provided does not give those guarantees Masters have the right to expect, i.e., that pilots assigned to them have the required qualifications and training to navigate and handle any ship in the waters for which they are licensed. This situation will be partly corrected if the Commission's General Recommendation No. 13 (Part I, p. 494) is implemented.

Unless a candidate is a qualified mariner who has had practical experience in the waters of the District, it is considered that, after it has been ascertained by examination that he possesses the necessary local knowledge, his skill to navigate vessels in these waters should be appraised through a grade system and that an unlimited licence should not be granted unless he has proven his competency through continued experience and a good record.

In case there is no candidate who meets these basic requirements, the Pilotage Authority should be authorized to issue Pilotage Adviser's licences (Part I, p. 492). The difficulties of navigation in the District are not beyond the competence of a Master with advice on the peculiarities of the District from a person with local knowledge.

5. PILOTAGE OPERATIONS

(1) PILOT BOARDING STATION AND PILOT STATION

Pilots board and disembark from vessels bound to or from Campbellton or Dalhousie in an area that lies about two miles from Dalhousie between Bon Ami Rocks and the Miguasha Point light buoy.

Subsec. 15(2) of the By-law speaks of an *office* with a telephone that the Pilot Master is to maintain "in a location convenient to the *pilot station*". Subsec. 16(5) requires a pilot to report to the *pilot office* the time of his departure for duty; subsecs. 16(4) and (7) require a pilot to obtain from the *pilotage office* the latest information as to the state of the District and to report to the *pilotage office* upon the conclusion of an assignment.

The use of different expressions and terms in the same piece of legislation is supposed to mean that each term has a different meaning. These terms are not defined in the regulations. It appears that the office to be kept by the Pilot Master is the "pilotage office", which is also called "pilot office". In addition, there would be a "pilot station" where the pilots available for duty are expected to remain and where they could be reached for despatching purposes. The "pilotage office" is supposed to be established by the Pilot Master near the "pilot station". No doubt, in addition, the Secretary is expected to have an office of his own.

In legislation there should be consistency in the terms used, and, furthermore, unless the meaning of the term used is clearly apparent from the context, it should be defined in the regulations.

The number of various offices and stations provided in the By-law presupposes an extensive organization which is not the case. With two or three pilots who can be reached by telephone, there is no need for any office or station except the District office where the District administration is carried out. This, in fact, is the situation which prevails. Therefore, these inoperative By-law provisions should be abrogated and replaced by provisions which reflect the actual practice or which define a new realistic procedure which is to be followed. Unnecessary and inapplicable regulations cause harm in that they belittle the importance and necessity of legislation and invite complacency toward illegality.

(2) PILOT VESSEL SERVICE

Pilot vessel service is required only at or near the boarding station.

Except for the winter months, the service is provided by the Restigouche Boating Company Ltd. through their pilot vessel, the M.V. *Rustico* of 8 registered tons, length 37.5 feet, breadth 10.5 feet, propelled by an 83 h.p. motor engine. This vessel is licensed by the Pilotage Authority as required

by the By-law. The vessel is equipped with a standard compass. She is not equipped with radar, echo sounder or radiotelephone. The vessel operates from Dalhousie, which is in the proximity of the boarding station, and is used throughout the summer and during the early and later stages of ice, but not in mid-winter. She is hauled ashore about December 25 and refloated about April 20. During the winter period, tugboats belonging to the Canadian International Paper Company at Dalhousie are used instead.

The arrangements between the Pilotage Authority and the Restigouche Boating Company Ltd. and the Canadian International Paper Company are that the cost to the District of the pilot vessel service provided by either company equals the pilot boat charge specified in the tariff that ships have to pay, i.e., \$15 for each embarkation and disembarkation. Under such an arrangement, neither the District nor the pilots sustain a deficit for the pilot vessel service.

Originally, the pilots themselves operated the pilot vessel, which was the property of the Pilotage Authority, and the cost of its operation, maintenance and insurance was deducted from District earnings. Following the loss of this vessel, the \$1,000 received in insurance was turned over to the pilots toward the purchase of a new one and, in the meantime, hired pilot vessels were employed. Instead, the two pilots and the then apprentice formed a private partnership for the operation of a boat service in the area, mainly to provide a pilot vessel service. In 1957, the venture was incorporated under the name of Restigouche Boating Company Ltd. under the New Brunswick Companies Act with a stated capital of \$20,000 divided into 2,000 common shares and head office at Dalhousie (Ex. 300). In addition to the foregoing, the charter specifies that the company is authorized to carry on the business of pilotage in Chaleur Bay and on the Restigouche River and, for that purpose, to employ pilots and apprentice pilots, if authorized to do so under the Canada Shipping Act and the regulations made thereunder.

In 1961, one of the two pilots (Pilot Mott) died and through inheritance his shares became the property of his wife who, together with the two other shareholders, both pilots by then, owned and operated the company and participated in the profits, if and when dividends were issued. This situation still prevails and Mr. F. Bourdage, the newly licensed pilot, is not a shareholder (Ex. 1510(bb)).

The company has purchased at least two vessels but M.V. *Rustico* is licensed for the service. However, this vessel does not hold a Certificate of Inspection from the Steamship Inspection Division of the Department of Transport, since such a licensing requirement is not listed in the By-law. (For comments, vide Part I, p. 313.)

Apart from pilot vessel service, the company uses its vessel for whatever tasks they may be required to perform. A principal source of revenue is handling lines for ships at the International Paper Company's wharf.

The pilots (and the apprentice, if any) operate the vessel themselves without remuneration and have no employees. When a pilot is placed on board a ship, the pilot vessel is manned by one of the other pilots. Sec. 17 of the By-law provides that "no pilot shall engage in any employment or undertaking other than his regular duties as a pilot during the season of navigation, except with the written consent of the Authority". No mention was made of such written consent having been obtained, but there is no doubt that the pilots' extra activities are known and at least tacitly approved by the Pilotage Authority. Since their workload is light, these extra activities should not conflict with their pilotage duties.

The amount collected in pilot boat charges and paid to the Restigouche Boating Company Ltd. and the Canadian International Paper Company for pilot vessel service has averaged \$3,500 annually for the years 1960-1967.

At present, the pilots derive no direct financial benefits from the company in that they give their services without remuneration and there are no dividends to shareholders, who, however, own the equity represented by their shares which increases with the value of the company's assets. All receipts are employed for the operation of the vessel and purchase of new equipment. The pilots derive an indirect benefit in that they do not have to bear an operational deficit which would be the case if the use of the vessel were restricted to pilot vessel service.

COMMENTS

The method employed to provide for pilot boat service is desirable when pilotage is conducted on a small scale, unless efficient service can be readily obtained at a reasonable price by hiring privately-owned vessels. It has the advantage of providing the pilots with an occupation closely related to their profession but unlikely to interfere with it. This method should not be resorted to if it has the unwarranted result of creating an artificial requirement for more pilots than are necessary in the circumstances.

The solution is commendable when extra revenue may be earned by using the vessel for other purposes, providing its availability for pilotage duties is assured. The present system, however, has one drawback in that there is no way to ensure that the pilot vessel will always remain in the hands of licensed pilots (a situation which is now developing). As experience with the "companies for the support of pilot vessels" has proved, the pilots gradually lose control because shares are sold, pledged, mortgaged or transmitted at death to estates. There is no guarantee, nor any mechanism to ensure, that future pilots will be able to obtain shares in the company, and there could be unwarranted speculation in the sale of shares, either on the part of the company or by individual shareholders, which would

defeat the interest and purpose of the company. This could be remedied by appropriate provisions in the company's charter and by appropriate provisions in the regulations governing the licensing of pilot vessels. Even under the present statute, such regulations could be enacted under subsec. 329(c) C.S.A. (vide also Part I, Gen. Rec. No. 25, pp. 554 and ff.).

(3) DESPATCHING

According to the By-law, despatching is the responsibility of the Pilot Master who is to maintain at his own expense, an office with a telephone at a location convenient to the pilot station where shipping agents and the radio station can communicate requests for pilots. However, this elaborate theoretical organization is far from reality and is preposterous with only two pilots on strength, which has been the case for several years. In actual practice, one of the two pilots, called the Pilot Master, receives requests for pilotage from the shipping agents and both pilots act as partners sharing the workload and earnings equally.

In addition, they share the work involved in their boat company and participate with the third shareholder in its profits.

(4) WORKLOAD

Accurate data breaking down the pilotage workload are not available. However, the information on hand is sufficient to provide a reasonable appraisal.

Since 1952, pilotage traffic has been fairly constant. The number of ships piloted² in 1967 (118) is almost the same as in 1952 (111). There were peaks in 1953 (130), 1963 (130) and 1964 (143) and a low in 1960 (93). From 1952 to 1957, assignments were shared by three pilots and since then by two. During the war years, there was very little pilotage, e.g., 18 ships in 1945 for four pilots. Assignments steadily increased from 1948 to 1951 for the same number of pilots.

During the last forty years, Restigouche has never ranked as a large District: the peak of its pilot strength was reached in 1939 when there were six who between them piloted 96 ships.

Although traffic in the District remained almost constant during the last decade, the dimensions of the ships trading there steadily increased, as is shown by the District earnings in 1967 (\$36,926.53) which are more than double those in 1958 (\$16,898.36), although the tariff remained the same and the number of vessels piloted (118 in 1967 and 115 in 1958) was approximately the same. The average net tonnage of ships piloted increased from 2,393 tons in 1960 to 4,013 tons in 1967.

² *Ships piloted* generally means two trips each, i.e., inward and outward, but occasionally an exempt ship employs a pilot inward but not outward or vice versa.

The following table shows the number of trips and movages performed by the two pilots from 1960 to 1967.

Year	Trips	Movages	Total Assignments
1960.....	190	50	240
1961.....	212	37	249
1962.....	202	36	238
1963.....	260	42	302
1964.....	280	76	356
1965.....	244	38	282
1966.....	228	30	258
1967.....	236	33	269

The annual reports (Ex. 299) do not give a breakdown of trips by destination or origin, both of which are necessary in order to establish the workload, since the duration of a trip from sea to Dalhousie is much shorter than from sea to Campbellton.

Shipping statistics provided by the Dominion Bureau of Statistics for vessels over 250 net registered tons (Ex. 1483) provide the necessary information. The following table shows the breakdown of arrivals as shown in these statistics compared to the totals of arrivals and trips shown on the District Annual Statements.

Year	D.B.S. Statistics Arrivals of Ships Over 250 NRT			Pilotage Authority Annual Reports	
	Dalhousie	Campbellton	Total	Arrivals	Trips
1963.....	94	31	125	130	260
1964.....	113	30	143	143	280
1965.....	91	29	120	122	244
1966.....	88	23	111	114	228
1967.....	103	24	127	118	236

This indicates that there is very little pilotage, if any, at any port or loading station in the District other than Dalhousie and Campbellton. The Pilotage Authority has reported that in the last three years there have not been any assignments elsewhere (Ex. 1510(z)). The slight discrepancies between the figures of D.B.S. statistics and those of the annual reports may be accounted for by the fact that occasionally vessels smaller than 250 tons are piloted and larger vessels enjoying an exemption do not employ a pilot.

There is another service rendered by the pilots of which no record is kept and for which no charge is made, i.e., piloting government vessels especially ice-breakers (Ex. 1510(z)).

Re the distribution of assignments during the year, there are very few during the winter months, all at Dalhousie because the river is frozen. Information furnished by the Dominion Bureau of Statistics (Ex. 1510(u)) indicates that the number of ships that called at Dalhousie between January 1 and April 30 in 1963, 1964 and 1965 amounted to 18, 18 and 21 respectively, about half of them during April.

The average for the four winter months was 4.5 ships per month in the winter of 1963 and 1964 and 5.3 ships in the winter of 1965. Since one ship means two pilotage trips, the above average figures correspond to the average workload in trips per pilot in that period, i.e., about one trip a week. Because the operations of the Restigouche Boating Company are also suspended during that period, the pilots normally take their annual leave then.

During the eight-month river season of navigation, which extends roughly from May to December inclusive, the average number of ships per month and, therefore, of trips per pilot were for the same three years 1963 to 1965 inclusive, 13.4, 15.6 and 12.4, respectively, i.e., between three or four trips per pilot per week, to which should be added occasional movages averaging 2.6, 4.8 and 2.4 respectively per month per pilot.

Estimating the duration of a trip assignment from sea to Dalhousie at two hours, including time spent in the pilot vessel, and four hours for a trip to or from Campbellton, including travelling time back to Dalhousie, the average monthly time spent on pilotage trips during the busiest year, 1964, was 43.3 hours per pilot, i.e., about ten hours per week. The pilots remarked, however, that pilotage is not evenly spread and that peak rush periods occur at the opening and close of the navigation season.

In theory, such pilotage work could be attended to by only one pilot, and, even during peak periods, any occasional delays would not be of long duration. In practice, two pilots are required to ensure service in the event of illness or injury, but there is no requirement for three. The appointment of the third pilot in 1968 can only be explained as discharging a moral obligation to the apprentice who should not have been accepted as such unless it was expected that after a reasonable period he would receive a licence, especially since he was required to serve without remuneration.

6. PILOTS' REMUNERATION AND TARIFF

The pilots made no representation about remuneration or tariff and appear satisfied with the present system.

The pilots' remuneration consists of a share in the pool. The pooling procedure set out in the regulations is only partly followed in that, contrary to the By-law, pooling is based on the amount on hand and not on dues as earned, the revenue is not fully distributed at the end of each month

(nor even at the end of each year) and a certain amount always remains, no doubt as a reserve to meet current operational expenses. The administrative expenses that, according to the By-law, are to be met personally by the Pilot Master are paid out of the pool as general District operating expenses. The pilots used to take an equal share of the revenue, provided they had been available for duty or on leave or sick leave with pay. However, the Secretary informed the Commission that pilot Bourdage receives only 20% of the District net revenue, despite the fact he holds a permanent licence. The other two pilots receive 40% each (Ex. 1510(bb)).

The Act provides no sharing rights or remuneration for apprentices. However, in 1965, 1966 and 1967, a few hundred dollars were paid out of the pool to the apprentice (who is otherwise employed), reportedly "to assist him in overcoming loss of pay due to his apprenticeship" (Ex. 1510(w)).

A pilot's share of the pool is his full remuneration. There is no Pension Fund, travelling expenses are reimbursed and group expenses are minimal (no group insurance or protection plan and the only expenses of this nature would be for attendance at pilots' meetings). Since the District is financially self-supporting, a pilot's share in the total cost of the service can be established without difficulty but the resultant figures can not be compared with those for other self-supporting Districts because part of the pilot vessel service cost is met by the pilots through their private company out of non-pilotage revenue.

The following table indicates the average "take home pay" of each establishment pilot and the "average share of the total cost of the District" per establishment pilot. For the meaning of these expressions vide Part II, pp. 132 and ff.

Year	Number of Establishment Pilots	Average "Take Home Pay"	Average Share of Cost of Service
1945/46.....	4	\$ 495.36	\$ 599.21
1955/56.....	3	4,221.50	5,595.07
1959/60.....	3	5,297.14	6,921.89
1960.....	3	5,839.14	7,389.75
1961.....	2	10,420.70	12,834.38
1962.....	2	9,731.82	11,964.32
1963.....	2	11,822.40	14,535.13
1964.....	2	15,613.19	18,690.25
1965.....	2	14,136.58	16,873.12
1966.....	2	14,774.25	17,483.07
1967.....	2	15,414.20	18,405.18

SOURCES: Exs. 299 and 1510(aa).

Although the rates have not been changed since March, 1958, and the number of assignments has remained fairly constant, the pilots' remuneration has increased considerably for two reasons:

- (a) the number of pilots sharing the pool was reduced from three to two (conversely a substantial reduction is to be expected in 1968 on account of the addition of a third pilot);
- (b) ships have steadily increased in size with the automatic result of increased revenue because the tariff is based on draught and tonnage.

The tariff structure remains unchanged from the first legislation and, following pre-Confederation practice, still provides rates for sailing ships based on draught alone. In 1903, a surcharge based on tonnage was added for steamships in addition to the rates for draught. This structure still remains and today the rates are \$2.60 per foot of draught and 2¢ per net registered ton.

Originally, the tariff realistically distinguished between a smaller charge for a pilotage voyage to Dalhousie, which is strictly port pilotage, and other pilotage voyages in the District, principally to Campbellton, which involve river piloting in addition to services rendered at the port of destination. These charges have since been combined and the tariff is now the same for all ports of destination or origin within the District.

In addition to the foregoing, the tariff provides a charge of \$1.00 per foot of draught plus 2¢ per NRT for each time after the first inward or outward trip a ship calls at a port or loading station en route within the District. The former Secretary stated that during his tenure of office there had been no occasion to impose this charge.

COMMENTS

The wording of these tariff provisions is archaic, e.g., the power-driven vessel exception has long since become the exclusive rule. Therefore, if this section is to be retained, it should be completely redrafted in order to reflect the present situation.

The difference in the nature and duration of the pilotage services rendered at Dalhousie and Campbellton should also be reflected in the tariff.

The rates for a pilotage voyage are fixed at a very high level which can not be justified either by the financial needs of the district or by the difficulty and nature of the services rendered. A 5,000 NRT ship drawing 20 feet is required to pay \$152 (not counting the pilot boat charge) for the short pilotage trip from sea to Dalhousie and berthing in the harbour. A similar service in the Sydney District, where the dues are considered high, calls for a charge of \$98; in Saint John (N.B.), where the difficulties of navigation are extreme by comparison, \$80; in Halifax, \$72.05; in the New West-

minster District, where the tariff structure is the same, and also the rate per foot of draught, while the rate per ton is 1¢ instead of 2¢, \$102; Les Escoumains to Quebec plus berthing, \$141.50. The Restigouche rates are the main reason why the remuneration of its pilots is so high in comparison with other Districts or with pilots whose workload is comparable. These higher rates might have been reasonable in order to ensure at least minimum remuneration when there was very little traffic and more pilots were on strength, but they are not now warranted. Moreover, they amount to an abuse of the compulsory payment system. The addition of a third pilot, which was not justified by the demand for service, should not be taken as an excuse to maintain the rates at the present level, and even less to increase them.

Public interest is a factor that must be taken into account by the Pilotage Authority in the exercise of its rate-fixing function, but under Part VI of the Act it is a very difficult problem in practice for a Pilotage Authority to reduce rates, as should have been done in this District.

As for the type of tariff structure that should be adopted, there seems no good reason why the ton-unit price based on maximum gross tonnage should not be adopted (p. 123). In view of the fact that all traffic proceeds either to Dalhousie or Campbellton, the easiest solution would be to adopt a ton-price unit for each port. If a pilotage demand develops elsewhere, the rates should be amended.

7. FINANCIAL ADMINISTRATION

There is no fund except the Pilotage Fund. Since the District is financially self-supporting, the annual financial statement deals with the different kinds of earnings and is not confined to the pilotage dues that comprise the pool. The statement is made on the basis of receipts and disbursements and, therefore, the items *accounts receivable* and *accounts payable* do not appear. Because current expenses must be paid as they fall due, the By-law requirement that all money in the Fund be fully disposed of at the end of each month is not followed and a small reserve is always kept so that any expenses anticipated after each sharing can be met without delay. This accounts for the item *Balance on Hand* at the beginning and end of the financial year.

(1) ITEMS OF REVENUE

The items of revenue may be divided into dues and fees. Dues have already been analyzed and fees amount to very little.

Fees comprise:

- (a) The \$10 examination fee provided by subsec. 11(5) of the By-law. Apart from its illegality (Part I, p. 259), this is a negligible item in view of the small turnover of pilots. The last time an examination was held was 1959.

- (b) The \$10 pilot's licence fee which is issued pursuant to subsec. 12(3) at the end of the probationary period. For the same reason as above, this is a negligible and rare item. However, a \$10 entry for pilot's licence fees appears every year in both assets and expenditures. At the Commission's hearing, the Secretary stated that sec. 12 of the 1935 By-law called for an annual \$5 fee to be paid by each pilot. This provision was not retained in the present By-law but the Pilotage Authority continued to charge the fee. The Secretary explained the corresponding expenditure item by saying that these fees are paid out to a separate accumulating account and are used for such purposes as travelling expenses for the local Commissioners which, since he had been in office, had occurred once. This practice is obviously illegal and should be discontinued. The travelling expenses of the members of the Pilotage Authority form part of the District operating expenses and should be paid openly as such. As for licence fees, the By-law provision should be followed and the practice of collecting annual fees should be discontinued.
- (c) The pilot vessel fee which is fixed by subsec. 25(3) at \$5 for the first licence and at \$1 for each annual renewal. This provision is only partly followed. From 1960 to 1967, there is only one such entry, i.e., \$5 for the issuance of the first licence to the pilot vessel in 1960. If it is considered that this By-law provision calling for a renewal fee is not warranted, the By-law should be amended and the charge deleted; otherwise it must be collected.

All these fees are another relic of the distant past when free enterprise prevailed and have no place in a system where the provision of service is controlled by the Pilotage Authority. The pilots are, in fact, the Authority's employees and the Authority prevents any pilot vessel service competition by granting a franchise to only one pilot vessel owner (Part I, p. 260 and pp. 313-314).

(2) EXPENDITURES

Apart from the shares of the pilots in the pool, which are the main items of expenditure, and the licence fee item previously mentioned, expenditures consist of the Secretary-Treasurer's remuneration, the cost of the pilot boat service, the pilots' travel expenses, other District operating expenses, the pilots' group expenses and the apprentice's compensation.

The salary of the Secretary-Treasurer was fixed in the regulations made by the Governor in Council when he created the District in 1935 at "three

per centum of the gross receipts and earnings of the pilots each calendar year". This is repeated with a slight difference in subsec. 3(3) of the District By-laws which fixes it at "three per cent of the gross receipts of the District". As seen above, this alteration in wording makes little difference in practice since items of revenue other than pilots' earnings are negligible. In theory, however, this poses a problem which should be corrected in legislation. The 3% is deductible from all pilotage dues, including pilot boat charges.

This item is shown in the financial report in two separate entries because of the practice adopted by the Secretary for the collection of pilotage dues. No doubt at one time the practice was for pilotage accounts to be paid immediately, which required a collector to be on location when ships arrived and were about to depart. To avoid extensive travelling, Mr. Carr, who resided at Campbellton, made a private arrangement with a resident of Dalhousie for the collection of the dues at that port, the collector's remuneration being the 3 per cent on the dues he collected that would otherwise have been paid to the Secretary.

The new Secretary-Treasurer has continued these arrangements, which no doubt work well, and the shipping agents concerned are used to them, but they are no longer warranted in view of the practice adopted elsewhere for the Secretary-Treasurer or local representative of the Pilotage Authority to collect all pilotage dues through correspondence. In view of the fact that most pilotage assignments begin or end at Dalhousie, the prevailing arrangements have the disadvantage of depriving the Secretary-Treasurer of a substantial part of his remuneration. Since this is a private arrangement, payments to the Dalhousie collector should not appear in the financial statement but the full 3 per cent should be indicated as being the Secretary's own remuneration.

The item *Pilot travel expenses* covers all expenses incurred by pilots, i.e., actual travelling expenses by taxi between Dalhousie and Campbellton (a road distance of 21 miles), expenditures made when a pilot has to wait because a ship is delayed and the cost of a telephone the pilots maintained until 1968 (Ex. 1510(x)). Expenditures for boat service require no elaboration.

The items covering other operating expenditures in the aggregate are not extensive. These comprise telephone and telegraph charges, the cost of stationery and supplies, postage and express, bank charges and other miscellaneous small items.

In 1962, 1965, 1966 and 1967, there is an expenditure entry for the apprentice pilot amounting to \$20, \$200, \$300 and \$490 (vide p. 380).

The following table shows for the years 1961 and 1967 the amount of each type of expenditure and the percentage of the total.

EXPENDITURES

	1961	(%)	1967	(%)
Sec. and Treas. remuneration	\$ 770.17	3.0	\$1,092.12	3.0
Boat services.....	3,210.00	12.5	3,780.00	10.3
Pilots' travel expenses.....	648.45	2.5	405.10	1.1
Pilots' licence fees.....	10.00	0.0	10.00	0.0
Other operation expenses:	188.61	0.8	204.74	0.6
Tel. and telegraph.....	170.69		106.00	
Stationery and supplies.....	nil		70.64	
Provisions.....	nil		nil	
Postage and express.....	5.50		nil	
Bank charges.....	12.42		17.50	
Miscellaneous.....	nil		10.60	
Pilots' group expenses.....	nil		nil	
Pilots' shares.....	20,841.46	81.2	30,828.40	83.7
Apprentice remuneration.....	nil	—	490.00	1.3
	\$25,668.69	100.0	\$36,810.36	100.0

COMMENTS

At first sight, it would appear that this District is not expensive to operate but this satisfactory situation is mainly due to two factors:

- (a) The function of Secretary-Treasurer is only a part-time occupation requiring no clerical assistance.
- (b) Local arrangements guarantee that the District will not sustain a pilot vessel service deficit as is usually the case when this service is operated by the Pilotage Authority. The fact that the service is performed by a third party makes it possible for the vessel to be used for other remunerative purposes, thereby making profitable an operation which otherwise would be in deficit.

The pilots do not benefit from the Workmen's Compensation legislation or from the Unemployment Insurance Act. However, their income tax is deducted at source and, for that purpose, the Pilotage Authority is considered their employer. Moreover, for the purpose of the Canada Pension Plan, pilots are also treated as employees, half of the contribution being paid out of the general District revenues. The only pilots' group expenses are the travelling expenses incurred to attend pilot meetings. For the period 1960-1967, there were only two such entries, \$50 in 1963 and \$180.60 in 1964 for travelling to Ottawa and Saint John.

Subsection II

PILOTAGE DISTRICT OF BATHURST, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

All special legislation governing the District of Bathurst, except appointments, is contained in regulations consisting of two orders emanating from the Governor in Council and the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The District was created in 1878 by Order in Council P.C. 272 (Ex. 1511(a)) which fixed its limits, appointed the members of its Pilotage Authority and made the payment of dues compulsory¹.

The Pilotage Authority remains a commission, now composed of three members. The three present incumbents, all residents of Bathurst, were jointly appointed by the same Order in Council P.C. 1963-1529 dated October 17, 1963 (Ex. 1511(c)). The following year, one of the commissioners, Mr. Leo J. Melanson, was also appointed Secretary and Treasurer and his remuneration was fixed at 5 per cent of the pilotage dues (P.C. 1964-724 dated May 14, 1964, Ex. 1511(d)).

The District limits were last defined July 23, 1957, by Order in Council P.C. 1957-988 which restricted the Pilotage District to the harbour of Bathurst and its immediate approaches:

"The Pilotage District of Bathurst, New Brunswick, comprises the navigable waters inside a line drawn from Carron Point to Alston Point and the waters five miles to seaward of that line" (Ex. 1511 (b)).

¹The validity of the compulsory payment of dues could be disputed on account of a clerical error in the Order in Council which was never corrected. By exception, two Districts were created simultaneously by the same Order in Council. The last clause dealing with the compulsory payment of dues speaks of only one District and does not specify which one is intended. "...to make the payment of Pilotage Dues compulsory within the limits of the said District."

(2) PILOTAGE AUTHORITY'S REGULATIONS

The current General By-law was confirmed March 29, 1958, by Order in Council P.C. 1958-475. It has not been amended since.

Except for small differences, it is the Restigouche By-law verbatim. The main differences are:

- (a) The ETA requirement is not defined.
- (b) There is no Pilot Master, the Secretary combining both administrative and operational functions.
- (c) Candidates for a pilot's licence, including apprentices, must hold a certificate not lower than Master Home Trade Tug, and the age limit is 33.
- (d) Pooling is based on pilotage dues actually collected and not on "amounts due" as in the Restigouche District.
- (e) The tariff structure is the same but the rates vary. The price per foot of draught for a full trip is \$2 and a trip to the ballast ground is \$1.55. The second leg of a trip from the ballast ground to the harbour is called a movage, which calls for an extra \$1 per foot of draught. In addition, in all three cases, if a vessel is power-driven, an additional charge of 3¢ per net registered ton is payable. Other movage charges are \$10. The pilot boat charge is \$15.

2. HISTORY OF LEGISLATION

Prior to Confederation pilotage for the port of Bathurst came under a licensing authority whose jurisdiction, according to New Brunswick pilotage legislation, extended to all the navigable waters within an electoral district. This practice was continued when the Pilotage District was first defined after the adoption of the 1873 Pilotage Act.

On April 9, 1878, by Order in Council P.C. 272, two Pilotage Districts were established to cover the coast of the County of Gloucester, the District of Bathurst and the District of Caraquet, the dividing point being the Roman Catholic Church at Grande Anse (Ex. 1511(a)). Hence, the Bathurst District extended over some 40 miles of coastline including, *inter alia*, what is now the harbour of Belledune. These limits remained in force until 1957 when as aforesaid, they were reduced to the waters of the port of Bathurst and its immediate seaward approach (Order in Council P.C. 1957-988 of July 23, 1957, Ex. 1511(b)).

In addition, the Order in Council made the payment of pilotage dues compulsory and appointed a Commission of five members, all residents of "the Parish of Bathurst".

On March 17, 1879, the "By-laws, Rules and Regulations for the government of Pilots for Bathurst District" that had been drawn up by the new Pilotage Authority were given approval by the Governor in Council (P.C. 316, dated March 17, 1879, Ex. 1511(e)). Characteristically, although the Pilotage Authority repeated in the By-law the definition of the District limits stated in the 1878 Order, there was no provision to govern pilotage in the outports—only service at the "Port or Harbour of Bathurst" was covered. The pilots are referred to as possessing a branch for the "Port or Harbour of Bathurst" and the rates deal exclusively with that port.

The existence of a previous pilotage service is confirmed by a reference to the rules and regulations made by the Justices of the County of Gloucester (which were thereby superseded), and by a provision that the pilots who held a branch under the previous administration would have their licence confirmed.

These regulations were generally similar to those in the Restigouche District, but the rate structure was different. For small vessels between 0-30-50-75 and 100 NRT a single charge was fixed for each group; for those in excess of 100 NRT there were four rates per foot of draught, depending on whether the trips were inward or outward, or terminated before or past The Forks. Apprenticeship was for two years to be served on board a licensed pilot vessel. Movages were not subject to the compulsory payment system. Free enterprise prevailed and the pilots had to own or be part owners of a pilot boat of not less than 18 feet in length.

New by-laws were approved by P.C. 3144 of November 15, 1897 (Ex. 1511(j)) which were amended from time to time, *inter alia*, in 1916 by a new tariff (P.C. 1965 of August 19, 1916, Ex. 1511(f)). At this time the special rates for small vessels, that were not steamships, were dropped. The surcharge for steamships, which already existed, was raised to 2¢ from 1¢ per registered ton. In 1949 by P.C. 1884 of April 14 (Ex. 1511(i)) the rates were again revised upwards, the surcharge was raised to 3¢ and a pilot boat fee of \$10 and a boatman's fee of \$5 were introduced.

In 1958, P.C. 1958-475 of March 29 revoked the previous General By-law and its amendments and approved the now current By-law which retain the same tariff structure and makes the pilot boat fee \$15.

Chapter B

BRIEFS

No brief was submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) PHYSICAL FEATURES AND AIDS TO NAVIGATION

Originally the District comprised some 40 miles of coastline and included the emplacement which is now the port of Belledune. In 1957, the District was confined to the only area where pilotage was performed, the port of Bathurst. For a time after the creation of the man-made port of Belledune (vide p. 363), the few pilotage services required were performed by one Bathurst pilot. There were two ships piloted in 1967 and 5 up to December, 1968. Since then, the Harbour Authorities (the Belledune Fertilizer Ltd. acting as such for the National Harbours Board) have given notice that the Bathurst pilots are no longer required (Ex. 1511(m)). The movement of ships in the port of Belledune does not present any particular difficulties. The depth of water is adequate both inside the harbour and in its wide approach area.

The harbour of Bathurst is situated on the south shore of Chaleur Bay on Nipisiguit Bay at the head of a basin formed by the junction of three rivers: the Nipisiguit, on the west bank of which the harbour proper is situated, Middle River and Tetagouche River.

Bathurst is a Port of Entry serving the surrounding area whose principal industries are lumbering, mining, fishing and farming.

The harbour freezes over during the winter and the navigation season is from mid-April to the end of November or the beginning of December.

From the navigational point of view, the port and its approaches are characteristic of a delta estuary where heavy silting, sedimentation, currents and cross-currents constantly change the banks and the depth and location of the channel. Continuing surveys and dredging are required and the buoys must be moved frequently to meet changing conditions.

A four-mile dredged channel is maintained. It is 140 feet wide with a depth of 15 feet at low water and is marked on both sides by red and black spar buoys.

A fairway buoy moored seaward of the entrance to the harbour indicates the location of the straight approach channel $1\frac{1}{2}$ miles in length. In addition to the spar-buoys, the centre of the channel is indicated by leading range lights just inside the entrance to the basin. The harbour entrance is two cables wide between Carron Pt. and Alston Pt. Thence the channel winds through mud and sand banks to The Forks where it branches around the mud banks formed by the junction of Middle River and Nipisiguit River.

Spring tides rise 7 feet and neaps $4\frac{3}{4}$ feet. The usual rate of the tidal stream in the main channel is 2 knots but during the freshet season (from the latter part of March to early June) it reaches 4 to 5 knots.

Two wharves accommodate ocean-going ships: the 500-foot Bathurst Power and Paper Company wharf and the 403-foot Government wharf. The depth alongside both wharves at low water is reported to be 20 and 21 feet respectively.

Considerable dredging has to be done off the paper mill to remove bark and wood refuse. The pilots warn Masters of this danger and point out that ships have grounded there causing damage to their pumps.

The size of ships that can use the harbour is limited by its physical conditions. The maximum draught for vessels outbound is 18.6 feet and inbound 17.6 feet, but this limitation seldom creates a problem. Since the sea bottom is of mud and sand there is little danger of damage if a ship touches or grounds. Pilot A. J. Doucet informed the Commission that he had piloted a deep draught ship with only 6 inches underwater clearance.

At the time of the Commission's hearing in 1963, the harbour's aids to navigation were not advanced sufficiently to permit normal night pilotage. However, small tankers about 500 tons NRT were piloted in and out during the night to lighten larger Irving Oil Co. tankers anchored outside the harbour. On these occasions, lanterns carried by the pilot vessel were placed on the ranges, the black buoy at The Forks and the Bathurst Power and Paper Company wharf. The pilot vessel, operated by the apprentice pilot, showed her lights and proceeded ahead of the ship being piloted.

Pilot Doucet stated in his evidence that frequent requests had been made to the Department of Transport to install new ranges and lights but to no avail. The Commission has learned since that three new sets of range lights have been installed (making a total of four) and that, in addition, 18 new spar buoys and nine lighted buoys are planned for placement.

Maintenance dredging is required annually.

(2) MARITIME AND PILOTAGE TRAFFIC

Vessels visiting the District comprise those engaged in coastwise trade, small tankers, medium sized ocean-going cargo vessels, small bulk ore carriers and fishing vessels.

The following table concerning vessels of 250 NRT and over arriving at Bathurst is based on information provided by the Dominion Bureau of Statistics (Ex. 1483):

Year	Arrivals	Aggregate NRT	Average NRT	Cargo Handled (Tons)	
				Foreign	Coastwise
1959.....	26	31,433	1,209.0	29,063	212,603
1960.....	42	85,893	2,045.1	22,551	276,565
1961.....	40	81,406	2,035.2	26,209	255,878
1962.....	50	96,730	1,934.6	139,858	178,311
1963.....	47	109,184	2,323.1	29,230	285,983
1964.....	36	96,145	2,670.7	99,897	203,242
1965.....	44	141,931	3,225.7	149,788	124,374
1966.....	59	184,804	3,132.3	162,875	95,602
1967.....	65	173,444	2,668.4	136,757	96,951

The following table, which shows the extent and importance of the pilotage service, is compiled from information contained in the Pilotage Authority's Annual Reports (Ex. 304). For comparative purposes, the arrivals and aggregate tonnage in the previous table should be multiplied by two since, for pilotage purposes, an *arrival* means two trips, one inward and one outward, and the *aggregate tonnage piloted* is counted each time.

Year	No. of Pilots	No. of Trips	Aggregate NRT	Average NRT
1959.....	2	36	48,826	1,356.3
1960.....	2	39	59,291	1,520.3
1961.....	2	59	72,910	1,235.8
1962.....	2	76	94,333	1,241.2
1963.....	2	94	94,439	1,004.7
1964.....	3*	54	109,645	2,030.5
1965.....	3	62	125,128	2,018.2
1966.....	3	71	184,441	2,597.8
1967.....	3	94	202,950	2,159.0

* Pilotage was performed by only two pilots.

The two tables show:

- Traffic is light.
- An appreciable number of vessels of 250 tons and over dispense with pilots.
- Size is not necessarily the factor which determines whether a pilot will be employed since the average net tonnage of the total traffic (over 250 NRT) in all years, except 1961, is substantially higher than the average net tonnage of ships piloted.

For Masters with a good knowledge of local conditions there are no serious navigational problems and a grounding is unlikely to cause damage in view of the nature of the sea bottom.

Compulsory pilotage in any form, including the compulsory payment of dues, can not be justified on the ground of safety, and even less as a matter of public interest.

These statistics do not give a true picture because they show more traffic than actually exists due to the shuttle system of lighters which discharge Irving Oil Co. tankers whose draught prevents them from entering the harbour. The number of such trips taken varies from 12 to 16 each time. The procedure is carried on day and night and takes five days or more. This method of operating began around 1960 and accounts for a significant part of the increase in both general and pilotage traffic since then. Each time a lighter returns to port is counted as one arrival and for pilotage purposes a round trip counts as two trips.

Traffic depends on local requirements. The increase in recent years is mainly due to three factors: construction by the Irving Oil Company of a plant served from a wharf in East Bathurst, the Bathurst Paper Company's decision to ship by sea rather than by rail and the increase in demand for local products.

2. PILOTAGE ORGANIZATION

The District is the responsibility of a three-member commission recruited locally. The few administrative duties are carried out by a member of the commission who is also appointed District Secretary and Treasurer.

Because of the small demand for pilotage, the Secretary and Treasurer has only a part-time occupation. Despite the fact that, according to the regulations, he is responsible for despatching in addition to his administrative duties, this is left to the pilots to arrange among themselves. If on occasion a request for a pilot is addressed to him, he merely conveys it to one of the pilots. In the circumstances, the senior pilot has assumed, unofficially, the function of Master Pilot. He complained to the Commission about the absence of a procedure covering notices of requirements which he claimed should always be referred to him.

The Secretary who was in office in 1963 at the time of this Commission's hearing, Mr. Antonio J. Robichaud, stated that the function of Pilotage Authority was being discharged by the local Commissioners in a very informal and perfunctory manner. Since his appointment in 1959, the Commission had never met as a body and responsibility for the District was left to him. However, he kept the members informed and occasionally telephoned the Chairman on important matters. He deplored this state of affairs. It was reported that a previous Secretary had abused the situation so created and had administered the District arbitrarily.

Neither the Government nor the Pilotage Commissioners take the functions of the Pilotage Authority seriously but treat the office as an honorific title granted for partisan political reason, as is demonstrated by the replacement of all the members of the Commission, including the Secretary, each time the Federal Government changes. In recent years, all the members including the Secretary were dismissed *en bloc* and replaced twice on the ground of political activities, June 25, 1959 (P.C. 1959-821) and October 17, 1963 (P.C. 1963-1529). Pilot A. J. Doucet was so accustomed to the process that he stated during this Commission's hearing early in 1963 that, since there had been a change of Government the appointment of a completely new Pilotage Authority was to be expected. His forecast proved correct. He added that partisan politics also played a part in the appointment of a pilot. He complained that he had recommended his boatman, Mr. Murray McLean, without success but added he was confident that the new Commission to be appointed by the new Government would approve. This prediction also materialized in July, 1964, despite the fact that the candidate did not meet the By-law requirements. The Secretary at that time denied Pilot Doucet's allegations, adding that the Authority was seriously considering appointing Mr. McLean.

COMMENTS

Drastic changes in organization which break continuity are unjustified except to deal with an operational crisis. The fact that wholesale changes can be made in the Pilotage Authority with no apparent ill effect allied to the perfunctory manner in which the District is administered indicates that the District as now constituted should be abolished. If a merger type District is created, pilotage services for the port of Bathurst should be included in order to establish control over licensing and rate-fixing.

3. PILOTS

There are at present (1969) three pilots and no apprentice (apprentice Murray McLean was granted a pilot's licence retroactive to July 13, 1964).

The evidence shows that the By-law requirements relating to licensing are completely disregarded. Sec. 10 of the District General By-law stipulates, *inter alia*, that "subject to section 12 (apprenticeship), no person is eligible to be licensed as a pilot unless . . . (c) he is . . . not more than thirty-three years of age; . . . (g) he holds a certificate not lower than that of a Master of a Home Trade Tug . . . (h) he has successfully passed an examination before a Board of Examiners." Sec. 11 stipulates that a Board of Examiners be appointed by the Authority for the purpose of examining applicants' general and local knowledge of subject-matter listed in subsec. (6). The first licence is probationary and may be granted to a person who does not qualify as an

apprentice, provided he is not over 45 (subsec. 12(1)) and meets the other requirements set out in sec. 10 (subsec. 12(4)), *inter alia*, holds the stipulated minimum marine certificate. The next licence is permanent and unlimited.

When Mr. Murray McLean received his licence in 1964, he was 49 and hence over age. In addition, he did not, and still does not, hold a marine certificate of competency of any kind. A Board of Examiners was not convened. Instead, Mr. McLean's request was dealt with by the Pilotage Authority itself as a routine matter. He was granted a permanent but limited licence enabling him to act only as relief pilot, until a vacancy was created by the departure of one of the two fully licenced pilots (Ex. 1511(k)).

The Pilotage Authority held a special meeting July 30, 1964, to consider Mr. McLean's application. The minutes of that meeting read as follows:

"BOARD OF PILOTAGE COMMISSIONERS OF BATHURST, N.B.

Leo J. Melanson, Secretary-Treasurer

Aug. 1st. 1964

Meeting of the Board was held at 1.15 P.M. with full Board present on July 30th. 1964.

Reading of minutes of April 18th. meeting approved.

The matter of granting a Pilots license to Murray McLean was discussed at length. After reading several references Mr. McLean was called in and he was questioned and examined by the Board.

Moved by J. Huntly Ferguson and seconded by Patrick M. Meahan and carried that Murray McLean be granted a Pilots license for the Port of Bathurst District. It being understood that he act only as spare Pilot as originally intended by our Board. To be paid only when one of our 2 appointed Pilots be incapacitated for some time, and monies from Pilotage to be divided by the Pilot in question and at the discretion of the Secretary Treasurer of the Board.

No other change until further advised.

Application for Pilot Apprenticeship was received from Mr. William McLean.

LEO J. MELANSON

Sec'y. Treas."

Pilot Murray McLean "pilots" a dredge for J.P. Porter & Co. during dredging season and is paid by them. These revenues are not treated as pilotage revenues for the District and do not appear on the annual financial statements. It is presumed that the tariff is not applied. In addition to this occupation, pilot McLean is the District linesman and operates the pilot vessel. He is paid out of the Pilotage Fund for his services as linesman and by the owner of the pilot vessel, pilot A. J. Doucet, for operating the pilot vessel (Ex. 1511 (k)). Pilot Murray McLean has served with the pilots for 18 years as pilot Doucet's boatman. His other experience in local waters has been as a fisherman.

Pilot Doucet stated in his evidence that he learned his trade by going on board ships from time to time since he was 12 years old, accompanying his father who was a pilot. He piloted his first ship in 1944 when he was 34. He holds no marine certificate of any kind.

The other senior pilot, Edgar McLean, was appointed in 1955 at the age of 43. Before his appointment he had served seven years as an apprentice and operated the pilot boat. He had also sailed in local waters as a fisherman and like the other two pilots, does not hold a marine certificate.

The Secretary at the time of the Commission's hearing, Mr. Robichaud, stated that he had once issued a licence to a pilot without a Board of Examiners having been convened.

There is no shipping casualty reported in any of the annual reports since 1959. However, the Commission learned at its public hearings that in 1962 the M.V. *Irvingwood* grounded between Carron Point and Alston Point but floated off undamaged with the following high tide.

The Secretary determines when the pilots take their vacation. If a pilot has to be absent for a few days, he informs the Secretary who makes arrangements with the other pilots. There is always one pilot available.

The Secretary has had no occasion to exercise his disciplinary powers and has received no complaint regarding the pilots.

COMMENTS

The foregoing indicates the obvious reluctance of the Department of Transport to discharge its surveillance role and the necessity for an active and effective Central Authority (Part I, pp. 62 and ff.).

The pilot's licence granted to Mr. Murray McLean is invalid since he did not, and still does not, meet the regulation requirements. The limitations imposed on his licence are also invalid because they are not authorized in the regulations.

This example shows how legislation is likely to be ignored unless a superior Authority exists to enforce it. Such irregularities are clearly apparent from the limited information contained in the District annual reports. Proper directives to the Pilotage Authority would have sufficed to make clear the importance of adhering to governing legislation in the discharge of a public function such as Pilotage Authority.

This Commission is satisfied that the Pilot Commissioners in this case acted in good faith, in the best interest of the service and on the basis of equity for those concerned, as they would have done if pilotage had been their own personal business. They often take established practice as their guide but are seriously hampered when, as so frequently happens in this District, continuity of membership is disrupted. This situation would probably not have arisen if, when such irregularities occurred, the Pilotage Authority had been reminded that not only was it bound by Part VI C.S.A. and by its own By-law but also it had the power and obligation to modify the regulations, with full confidence that such amendments would be sanctioned if they were *intra vires* and met genuine local requirements. Instead, the Pilotage Authority was left without surveillance or guidance, except when it

sought assistance on its own initiative. This is the basic cause of the unsatisfactory legal situation which now prevails.

Dealing with the question of the required number of pilots, it is considered that one pilot would be sufficient to handle the existing demand (vide p. 394). The appointment of a second pilot may be considered warranted to avoid interruptions in service due to illness or other reason, but there is no justification from the service point of view for appointing a third pilot. This is fully realized locally as is shown by the restrictive conditions placed on the present third pilot's licence and the fact that he has never been allowed to pilot a ship since he obtained his licence. It is obvious that this appointment was merely to establish a *fait accompli* so that when a vacancy occurs there will be no question of licensing another candidate. The decision could be justified in equity in that it made good the implied guarantee that by being an apprentice he would one day become a pilot and it compensated in some way for the years of sacrifice this extended apprenticeship involved.

4. PILOTAGE OPERATIONS

(1) PILOT BOARDING STATION AND PILOT BOAT SERVICE

The pilots usually board a ship about two or three miles seaward from the fairway buoy where the ship anchors.

It takes an average of three-quarters of an hour for the pilot vessel to reach the boarding area from the harbour where it remains between assignments. Hence, the pilots require a minimum of one hour's advance notice of a ship's arrival.

The pilot vessel is owned by the senior pilot, Mr. A. J. Doucet. Its total value is estimated at \$4,000. It carries no special equipment. A recurring annual expense of \$75 is required to replace the propeller which is damaged by pulp wood.

Despite the By-law requirement, the pilot vessel is not licensed. In addition, it does not carry a Steamship Inspection Certificate.

The practice has been for the pilots to furnish linesman service as well as pilot vessel service. It is their responsibility to attend to both. The \$15 pilot boat charge is divided between the boat owner and the apprentice—\$10 and \$5—as was provided in the 1916 tariff since repealed (p. 390). Pilot Doucet complained that the aggregate amount of his \$10 share of the boat charge was not sufficient to meet the expenses of operating and repairing the boat. The apprentice also receives a \$25 fee for his line service, which fee is billed by the Secretary to the ship and collected by him as if it were part of the pilotage dues, despite the fact that such service is not recognized by the By-law and there is no such item in the tariff.

The Department of Transport officials are aware of this practice and consider that there is nothing illegal or objectionable in it, but they do not think that the linesman's charge should be incorporated in the tariff. The

Department's stand is partly correct. There is no objection if the pilots and apprentice pilots are permitted to engage in other occupations, whether or not related to the service, provided their availability for pilotage is unaffected. Linesman service is not a pilotage function and, therefore, it is beyond the Pilotage Authority's regulation-making power to fix by By-law a charge for such a service or to control it. There is also no objection if the charge for the linesman's service is collected by the Secretary as a personal service to the linesman, even if the Secretary charges the linesman a fee for so doing, as long as the latter agrees. However, this is not pilotage money and should not be treated as such. Since it is collected by the Secretary, it belongs to the Pilotage Fund, but should be entered and reflected in the financial statements as belonging to a third party.

As seen earlier, granting a pilot's licence to the former apprentice Murray McLean has not changed local arrangements for providing pilotage services. Pilot McLean continues to operate the pilot vessel and attend to lines and does not perform pilotage, but carries out the normal duties of an apprentice. He does not share in the pool and his remuneration consists of his \$5 share of the pilot boat charge and the \$25 unofficial linesman's fee.

When the regular pilot vessel is not available due to unforeseen circumstances, transportation is obtained from other local sources at an agreed price, e.g., the 1966 financial statement shows that a Bathurst Paper Company Ltd., tugboat was used for that purpose at a cost to the District of \$42.75.

(2) DESPATCHING

Despite the By-law requirement, despatching is not attended to by the Secretary nor are assignments given in turn. The two senior pilots are readily available throughout the eight-month season of navigation. They arrange the workload between themselves, including occasional movages in the harbour. From 1960 to 1967, only five movages are reported: two in 1966 and three in 1967.

There is normally a slight peak in pilotage traffic at the beginning and end of the season. The Irving Oil tankers cause a sharp increase in pilotage for a few days as a result of the shuttle system used. For instance, in 1962, out of 76 pilotage trips, some 25 were in lighters serving tankers that called about four times during the year. (For the number of trips for each year between 1960 and 1967, vide Table, p. 394.)

An inbound trip, including berthing, takes about an hour. Since it takes about three-quarters of an hour for the pilot boat to reach the boarding area, the time spent by a pilot on a trip from the time he leaves his home until he returns may be calculated as $2\frac{1}{2}$ hrs. This would mean that in 1967 (which was the busiest year on record with 94 trips and 3 movages) each pilot during the eight-month season was actually engaged in piloting for not more than 50 hours, and the total, including travelling time, could not have

exceeded 125 hrs. Such a small demand can readily be attended to by one pilot and the workload is extremely light when shared by two. Three pilots are clearly not warranted.

5. PILOTS' REMUNERATION AND TARIFF

This Commission received no complaint or recommendation concerning the pilots' remuneration or the tariff.

The system being followed for pooling and the tariff structure are both very similar to those in the Restigouche District.

As explained earlier, despite the fact that there are three pilots officially on strength, one is in name only, and does not share in the pool. The other two pilots share the net District revenues after operating expenses have been deducted. These include the pilot boat charges which, when collected, are paid direct to the senior pilot, A. J. Doucet. This accounts for the higher amount shown as pilot Doucet's earnings. However, he pays his boatman one-third of the boat charges and meets its operating expenses.

While the tariff structure is the same as in the Restigouche District, the amount of both components is different: the price unit for a foot of draught is \$2 and the price unit per NRT is 3¢. Hence, the pilotage charges for a ship of 5,000 NRT with 20-foot draught (which is used for comparison purposes with the figures quoted for Restigouche) would be \$190 plus the \$15 pilot boat charge.

These rates are very high in comparison with those charged in the larger Districts and are not warranted by navigational difficulties or by District financial requirements. It is further considered that the ton-price unit related to maximum gross tonnage with a minimum rate, which was recommended elsewhere, should apply in this District. The rate, i.e., the price unit, should be fixed to provide sufficient revenue to meet District expenditures while providing an adequate remuneration for the services performed. The establishment should not be increased beyond actual requirements indicated by the prevailing workload, i.e., two pilots, one of whom might well be employed as a relief pilot only. As the workload is not sufficient even to keep one pilot fully occupied, pilots should be allowed and encouraged to take other employment which would be compatible with their respective pilotage commitments.

Pilot Doucet complained that the pooling regulations are not always followed and cited two cases in the fall of 1962 when he received no share of certain earnings. The second pilot, E. McLean, explained that one case concerned the trawler *Polar Fish*, under 100 NRT and exempt from the compulsory payment of dues. When he was asked to pilot this vessel, he communicated with the Secretary for direction and was informed that, since it was exempt, he could accept the request and charge a nominal fee. The second vessel, the derelict *Burchton*, was to be towed in and converted to a

floating dock by the Bathurst Power and Paper Company. Pilot McLean was asked by the company agent to perform this task; he accepted and charged \$25. In both cases, Pilot McLean collected and retained the charges without involving the Secretary.

The same situation now obtains with regard to the employment of Pilot Murray McLean on the J.P. Porter & Co. dredge, if in fact he is employed there as a pilot.

It is considered that pilot Doucet was correct in his contention that, according to the By-law all earnings paid to pilots for pilotage services performed in the District should be deposited in the Pilotage Fund and eventually shared among the pilots.

The fact that a ship enjoys an exemption has absolutely no bearing on the applicability of the tariff and the pooling system (Part I, pp. 134 and ff.). The tariff should specify the remuneration of pilots for whatever services they may render in the course of their duties. In the case of the fishing vessel, the price was, therefore, \$2 per foot draught and 3¢ per NRT. It would have been illegal to ask for more and the Secretary was duty bound to charge exactly that price. The second case, as well as the case of the dredge, poses a difficulty in view of the fact that Part VI applies only to "ships" (Part I, p. 181 and pp. 213 and ff.).

The limited financial information provided by the annual reports does not establish the actual amount paid to each of the two pilots who share the pool. Only an aggregate amount is shown with an indication that this is divided 50/50 among them and that Pilot Doucet also receives the pilot boat charges. After the pilot boat charges have been estimated and deducted, and assuming that the two pilots receive exactly equal shares, their "take home pay" should be as shown in the following table, which also shows the share per pilot of the total cost of the District. The "take home pay" figures are however too high since they include the linesman's fees for which no data is provided to make even an estimation. Actual figures were obtained for 1967 (p. 404) establishing the linesman's fees at \$3,282.25 and the pilot's "take home pay" at \$7,893.39 instead of \$9,622.51 quoted below.

Year	Pilot Boat Charges Paid to Pilot Doucet*	Pilot's Take Home Pay	Pilot's Share of District Cost
1959.....	\$ 270.00	\$ 1,304.86	\$ 1,728.14
1960.....	585.00	3,540.68	4,036.43
1961.....	885.00	5,122.56	5,859.98
1962.....	1,140.00	5,884.20	6,795.82
1963.....	1,410.00	7,583.56	8,703.09
1964.....	810.00	6,045.28	6,789.85
1965.....	930.00	6,891.17	7,743.82
1966.....	1,165.00	8,664.24	9,755.22
1967.....	1,410.00	9,622.51	10,889.63

*One-third of this amount belongs to the linesman.

This table indicates the existence of the same situation that prevails at Restigouche and which is caused by the lack of policy regarding the establishment of rates and the unwillingness of local, uncontrolled Pilotage Authorities to reduce rates once set, although circumstances may have made them quite disproportionate. Although the same tariff obtained between 1959 and 1967, the pilots' "take home pay" increased more than six times (617.5%), while their workload (which still remains negligible) increased less than twice (161.1%). Since the tariff and the number of pilots with sharing rights remained the same, the increase is accounted for mostly by the increase in the size of ships (vide p. 393). (The remarks made in Sub-section I (pp. 381-382) re the necessity of revising rates apply here.)

6. FINANCIAL ADMINISTRATION

The only fund is the Pilotage Fund.

The financial administration of the District is attended to by the Secretary. After each assignment the pilots hand in their pilotage slip (source form, Ex. 303) signed by the Master, giving the name of the ship and all the other information necessary to compile the bill. The Secretary does not check the tonnage in the shipping register but takes it for granted that this was done by the pilot. The bill form being used lists and details the dues payable for the pilot's services, the pilot boat charge divided between boatman's fee and pilot boat fee, and also contains an item "other charges", which is used to cover the linesman's fee (Ex. 302). Both billing and collection are handled by the Secretary. Once a month or occasionally more frequently, the Secretary prepares a statement of revenue, gives a copy to each of the two sharing pilots and the linesman and pays the linesman his fees and the two senior pilots their share, after deducting 5 per cent of the gross revenue².

The Secretary submits annual reports to the Department of Transport as required by sec. 332 C.S.A., but the financial information they contain are devoid of details.

The accounts are never audited but the pilots stated that they were satisfied because they can easily make their own verification.

Financial administration is simplified by the fact there are practically no expenditures, which are not directly dependent upon the collection of dues. Since the pilot vessel service is provided by Pilot Doucet personally for a price which corresponds to the pilot boat charge, there should be no deficit in that connection except when this service must be obtained from other sources. There is no need to keep a reserve to pay the Secretary because he

² The money earned by one pilot in 1967 at Belledune was collected and shared in the usual manner but was not reflected in the financial statement because Belledune is outside the District. This accounts in part for the slight discrepancies in the 1967 financial statement (Ex. 1511(o)).

receives 5 per cent of the dues collected. The small expenditures for stationery, stamps and telephone which amounted to \$73.82 in 1967 are financed by the Secretary personally but he is reimbursed from time to time by the pilots out of their own money and no bookkeeping entry is made. Such a procedure is an unnecessary imposition upon the Secretary. There are no group expenses, and the pilots have no pension or group protection of any kind.

Financial administration is conducted on the basis of cash on hand. The Annual Reports that should contain the financial details are sketchy and convey very little information beyond aggregate amounts. To provide a clearer picture the Commission obtained a breakdown of the expenditures for 1967 (Ex. 1511(o)):

REVENUES*	
Pilotage dues excluding boat charges.....	\$ 16,901.01
Pilot boat charges (56 ships).....	1,680.00
Linesman's fees.....	3,455.00
Total.....	22,036.01
Less discrepancy.....	256.74
	21,779.27

DISBURSEMENTS	
Secretary's remuneration.....	1,114.24
Pilot Doucet's share in the pool.....	7,893.39
Boat charges (less 5% and less boatman fee).....	1,064.00
Pilot Edgar McLean's share in the pool.....	7,893.39
Pilot Murray McLean's share in the pool.....	nil
Boatman's fees (less 5%).....	532.00
Linesman's fees (less 5%).....	3,282.25
Stamps, stationery and telephone.....(73.82)	
Total.....	21,779.27

*Belledune earnings are not reflected in the annual statement. In 1967, there were two ships (aggregate NRT 19,364) which brought an aggregate revenue of \$1,363.10. This off-the-record revenue was distributed as follows (Ex. 1511(m)):

Pilot A. Doucet.....	\$ 567.20
Pilot E. McLean.....	567.20
Linesman M. McLean.....	156.75
Secretary's 5%.....	71.95
	<u>\$ 1,363.10</u>

COMMENTS

A brief study of the annual reports submitted in accordance with sec. 332 C.S.A. again demonstrates that the Department of Transport has not fulfilled the surveillance function entrusted to it by Parliament. The sketchy information forwarded neither constitutes a financial report nor provides a basis for the Department to discharge its limited but mandatory duties, a situation the Department of Transport should not have allowed to perpetuate. Furthermore, incomplete financial information distorts the information the return is purported to give, e.g., the actual remuneration of pilots.

In his last reply to this Commission's various enquiries, the present Secretary of the Pilotage Authority complained that he had no training or directive for this employment but was simply trying to follow the practice established by his predecessor. He poses the question: Why has no one ever checked his books? and he points out that he is "no auditor, just a layman, a retired business man". He added that he has all the records of the District financial operations and that his bank deposits and the bank statements always balance (Ex. 1511 (o)).

It appears that the foregoing procedural irregularities would not have occurred if the Department of Transport had shown interest and offered guidance. However, such a situation will not arise if a Central Authority with power to investigate and take remedial action is created as recommended (General Recommendations 17, 19 and 20).

Subsection III

PILOTAGE DISTRICT OF CARAQUET, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

Excluding Orders in Council concerning appointments, all special legislation for the District of Caraquet is contained in two orders issued by the Governor in Council and the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The District was created by the Governor in Council on April 9, 1878, at the same time and by the same Order in Council which created the Pilotage District of Bathurst (P.C. 272 of April 9, 1878, Ex. 1511(a)). This Order in Council contained all matters connected with the creation of a District and remains the authority for the legal existence of the District and the compulsory payment of dues. Its other clauses have been modified since. The Pilotage Authority is still a commission composed of three members whose appointments date back respectively to 1920, 1948 and 1951.

The District limits were last defined in 1938 by Order in Council P.C. 1453 dated June 24, 1938 (Ex. 1512(a)) as follows:

"To include all the coastal waters of the County of Gloucester, New Brunswick, inside an imaginary line drawn from the Roman Catholic Church at Grand Anse to a point three and one-half nautical miles due north (ast) from the Pokesudi Point Lighthouse, thence due south (ast) to the Pokesudi Point Lighthouse, together with all tributary waters flowing thereinto."

In other words, it is now limited to the port of Caraquet and its approaches.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

All the regulations emanating from the Pilotage Authority are contained in the District General By-law which was approved on May 28, 1962, by P.C. 1962-783 (Ex. 24) as amended on October 25, 1962 (P.C. 1962-1519).

The General By-law is very similar to that of Bathurst except for one point, the absence of apprenticeship. It provides for control of the service by

the Secretary, who despatches the pilots according to a *tour de rôle* for the pooling of the pilots' earnings and for the salary of the Secretary who receives 8% of the gross receipts. The District is financially self-supporting. No marine certificate or actual experience in District waters is required from pilot candidates. Their main prerequisites are residence in the County of Gloucester, age not less than 21 or more than 60, good health, good character and success in an examination on nautical and local knowledge. Skill is appraised in the course of a probationary period whose duration is left to the discretion of the Pilotage Authority. The By-law contains the usual provision that a pilot shall not be otherwise employed during the season of navigation unless so authorized in writing by the Pilotage Authority. Pooling is on the basis of dues collected and availability for duty, including leave with pay. Pilot vessels must be licensed annually. The tariff structure is based on draught and tonnage but the schedule is worded realistically to avoid the distinction between power-driven vessel and others. The rates are \$2.00 per foot draught plus three cents per NRT, and the charges for movages and pilot boat service are \$10 each.

2. HISTORY OF LEGISLATION

Up to the time of the creation of the District in 1878, pilotage in the port of Caraquet, as in the port of Bathurst, came under the jurisdiction of the Justices for the County of Gloucester.

On April 9, 1878, by P.C. 272 (Ex. 1511(a)) the Governor in Council divided the coastal waters of the County of Gloucester into two separate Districts—the Pilotage District of Bathurst and the Pilotage District of Caraquet—the dividing line being the Roman Catholic Church at Grande Anse. The Caraquet District extended to the south east boundary line of the County on the Gulf of St. Lawrence and included Shippegan and Miscou Islands. The Order in Council appointed as Pilotage Authority a local commission of three members, two residing at Caraquet and one at Shippegan.

Shortly thereafter, on September 30, 1878, by Order in Council P.C. 775, a By-law prepared by the new Pilotage Authority was given approval by the Governor in Council (Ex. 1512(b)).

This By-law contains realistic features which reflect the nature of the local pilotage organization, i.e., it has merely licensing and regulation-making power with jurisdiction over a number of separate pilotage services for the various ports within its limits. Pilots are licensed for one or more ports. The coastal waters do not form part of the District, except to serve as a boarding area, with the result that vessels passing through them are not subject to the compulsory payment of dues unless destined for one of the District ports. Subject to the payment of a fee an annual pilotage certificate may be issued to the Master or mate of "any ship or vessel registered in Canada" who is

found qualified by the Pilotage Authority to navigate his ship or vessel in the District. The number of pilots must not be less than 6. No marine experience or local knowledge is required but candidates must satisfy the Authority that they are competent. Licences issued by the previous Authority are cancelled and their holders must re-establish their competency. Each pilot must own his own pilot vessel. The pilot responsible for an inward voyage is entitled to pilot the same ship outward. Each pilot must make monthly returns to the Authority giving particulars of the services rendered and money collected. Fines are imposed for breach of the By-law, the amount within the established limit being left to the discretion of the Court or the Justice dealing with the case. As in Bathurst, the rate structure is different for small ships, viz. a flat rate of \$6 for ships up to 60 tons and \$9 up to 80 tons. The rates for larger ships are based on two factors: type of voyage and draught, the rates being \$1.20 per foot for an inward voyage and \$1 per foot for an outward voyage. A moveage calls for a fee of \$1.50 for vessels not exceeding 150 tons and \$2 for those above, but not subject to compulsory payment. The rates are the same for all ports in the District.

On May 18, 1880, by Order in Council P.C. 866, the Pilotage Commission was enlarged to five members by the addition of two residents of Tracadie.

The 1878 By-law was amended from time to time and remained in force until superseded in 1935 by a new By-law approved by Order in Council P.C. 1971 dated July 16, 1935 (Ex. 1512(g)).

The 1935 By-law established controlled pilotage, and shared the responsibility for control between the Secretary and the Pilot Master. Three pilot stations were established for the ports of Miscou, Shippegan and Caraquet. The dues were made payable to the Authority and were collected by the Secretary whose salary was fixed at 2½ per cent of the gross earnings. The pilots were entitled to an equal share in the net receipts of the District, the Pilotage Authority having power at its sole discretion to reduce the share of any pilot who failed to perform the requisite number of assignments. The special rates for small vessels and the difference between inward and outward voyages were abandoned, leaving a uniform rate of \$1.50 per foot of draught plus 1¢ per NRT. In addition, a \$3 pilot boat charge was instituted which, when collected, was to be kept in a separate fund used solely for the upkeep, maintenance and repair of the pilot vessel or vessels. The pilots were to take assignments in turn at the direction of the Pilot Master.

On June 24, 1938 (P.C. 1453, Ex. 1512(a)) the present limits (p. 408) were adopted when the Pilotage District of Shippegan was created (it was abrogated in 1960). The District territory was restricted to the port of Caraquet, its immediate approaches and the coast between Grande Anse and Maisonnnette Point. The District By-law was amended to conform to the new limits (P.C. 1965 dated August 10, 1938, Ex. 1512(i)).

Thereafter, the By-law was amended three times before it was superseded by the current General By-law in 1962. In 1949 (P.C. 2485, Ex. 1512(m)), the rates were increased to \$1.95 per foot draught plus 1.3¢ per NRT and in 1951 (P.C. 3811, Ex. 1512(n)), the pilot boat charge was increased to \$5. In 1953, new pilotage rates were adopted on the same pattern as those still prevailing at Bathurst, i.e., making a distinction between mechanically propelled vessels and others. There was a general rate per foot draught of \$2, \$1.55 or \$1 depending whether a ship made a full trip inside the District, or only a partial trip to or from the ballast ground. A 3¢ per NRT surcharge was set for vessels propelled by steam or by mechanical power. The pilot boat charge was increased to \$15, \$10 for the pilot boat and \$5 for the boatman (Ex. 1512(o)).

Chapter B

BRIEFS

No brief was submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The District of Caraquet comprises the port of Caraquet and its approaches together with that part of the south shore of Chaleur Bay west of Caraquet from Maisonnnette Point to Grande Anse. This last named section has been retained from the original limits as defined in 1878.

The port of Caraquet is situated on the south shore of Caraquet Bay at the southern entrance to the Bay of Chaleur. The harbour is described in the *Gulf of St. Lawrence Pilot* (sixth edition, 1968):

“Caraquet Harbour lies between Pokesuedie Island and Maisonnnette Point, on the mainland $7\frac{1}{2}$ miles to westward; it is entered through Caraquet Channel, a narrow, tortuous channel running between the steep edges of Pokesuedie and Caraquet Shoals. The northern side of the harbour is formed by Caraquet Island, with the shoals extending from it, and the drying sands extending southeastward from Maisonnnette Point.”

Caraquet Channel has sufficient depth for vessels of moderate draught. At its entrance there are depths of 5 to 6 fathoms and not less than 20 feet up to within half a mile of the east point of Caraquet Island. The channel between this island and the mainland has been dredged to 3 fathoms in a cut about $6\frac{1}{2}$ cables long and a quarter of a cable wide. Farther westward the channel broadens to a quarter of a mile with a depth of 4 fathoms. The head of the harbour forms a spacious but shallow bay, into which flows the northeast and southwest streams of the Caraquet River.

Caraquet is an excellent harbour for vessels of moderate draught, but mariners are warned of its dangerous approach which lies between shoals extending several miles from the shore. A depth of 20 feet extends from shore far enough for vessels to find safe anchorage. Caraquet is a thriving fishing village with a station on the Canadian National Railway. A dragger fishing fleet is stationed at Caraquet where a large fish plant is located. It is a Port of Entry.

A Government wharf is located at Middle Caraquet, L-shaped, 600 feet long with a 100-foot ell at the outer end where there is 6 feet of water at low tide. Young's wharf at Caraquet is the main shipping wharf, 1,200 feet long, block shaped, with 20 feet depth of water at the outer end and extending for 240 feet. There are good anchorage grounds off this wharf. Since there are no tugboat facilities, vessels berth and unberth by their own power. Spring tides rise $6\frac{1}{2}$ feet and neaps $4\frac{1}{2}$ feet.

Caraquet Harbour is frozen over during the winter and the season of navigation extends for seven months, from May 15 to December 15.

The boarding area is situated at the entrance to Shippegan Channel, approximately one mile north of the fairway buoy indicating the entrance to Caraquet Channel. From there to Young's wharf, where cargo vessels berth, is a distance of nine miles and the channel between is marked by light—and sparbuoys and leading lights situated on the eastern shore of the harbour.

Pilot Denis Lanteigne testified that the buoys and range lights were satisfactory but that ships were not piloted at night. The Chairman of the local Pilotage Commission, Mr. Jos. G. Chiasson, testified that fishermen who use the harbour day and night consider the range lights not bright enough and difficult to distinguish from those of private houses. The Department of Transport has informed the Commission that three additional light-buoys have been placed in Caraquet Channel since 1963, all light-buoys have been equipped with radar reflectors and the intensity of shore lights has been increased where possible.

Ships are not piloted at night because the channel is narrow and winding but little difficulty is encountered in daylight. The controlling depth of the channel at low tide is 20 feet, except inside Caraquet Island where there is a patch with only 18 feet.

The ports of Shippegan and Miscou have not been included in any Pilotage District since the abolition of the Shippegan District 1960. Hence, any services required there are provided by a local unlicensed pilot. Very few ships call at Shippegan: the principal traffic consists of small fishing vessels, fish carriers of 200-500 tons and the Irving tankers *Hickory* and *Seekonk*. The approach to Shippegan is not considered difficult but the channel is not as deep as at Caraquet. Only fishing vessels under 50 NRT use Shippegan Strait to enter the Gulf of St. Lawrence. A lift bridge is raised to allow them to pass.

(1) MARITIME AND PILOTAGE TRAFFIC

The vessels encountered in the District are mostly medium-sized cargo vessels or tankers engaged in foreign and domestic trade. There are also several fishing vessels.

The following shipping statistics provided by the Dominion Bureau of Statistics (Ex. 1483) show the total number of vessels of 250 NRT and over that arrived at Caraquet in each of the nine years from 1959 to 1967, including their aggregate net tonnage, and the tonnage of foreign and coast-wise cargo handled.

Year	Arrivals			Cargo Handled (Tons)	
	No. of Ships	Net Tons	Average Net Tonnage	Foreign	Coastwise
1959.....	23	25,295	1,099.8	34,399	2,699
1960.....	5	3,864	772.8	1,108	2,888
1961.....	26	26,785	1,030.2	32,851	2,368
1962.....	23	26,045	1,132.4	26,814	1,788
1963.....	17	13,385	787.4	9,218	2,834
1964.....	26	23,563	906.3	24,199	3,088
1965.....	33	34,979	1,059.9	38,492	5,844
1966.....	24	19,250	802.1	14,702	4,706
1967.....	18	18,281	1,015.6	10,187	6,605

The following table taken from the Pilotage Authority's Annual Reports (Ex. 308) provided the same information for ships piloted.

Year	Ships Piloted				
	No. of Pilots	No.	Aggregate Net Tonnage	Average Net Tonnage	No. of Trips
1959.....	2	15	13,790	919.3	30
1960.....	2	5	3,744	748.8	10
1961.....	2	24	23,886	995.3	48
1962.....	2	22	22,106	1,004.8	44
1963.....	2	11	8,685	789.5	22
1964.....	2	22	20,212	918.7	44
1965.....	2	34	36,035	1,059.9	68
1966.....	2	25	20,900	836.0	50
1967.....	2	21	20,368	969.9	42

The figures contained in the foregoing tables indicate that Caraquet can accommodate only comparatively small vessels. The largest reported was 1,603 NRT and the average net tonnage is approximately 1,000.

There is very little traffic except an Irving Oil Co. tanker of 579 NRT which calls monthly. Apart from vessels under 250 tons, almost all employ a pilot.

Maritime traffic is dependent upon local requirements. The low in 1960 is accounted for by the fact that the wharf was under construction. The District Secretary stated that he expected the drop in traffic in 1963 because of a decline in wood exports to Europe. He explained that lumber ships go into Bathurst for their principal cargo but, since there is not sufficient water to allow them to take a full cargo there, they call at Caraquet to take on a deck load. In fact, not more than 3 or 4 ships called at Caraquet in 1963, if the Irving tanker which calls once a month is excluded.

2. PILOTAGE ORGANIZATION

The District organization is the same as in Bathurst (vide p. 395), but it is apparent from the Commissioners' lengthy tenure of office that partisan politics do not play any part. The appointment of the Pilotage Authority Chairman, Mr. Joseph Chiasson, dates from 1920, Mr. Alexandre Gionet, 1948, and Mr. Raymond Roy, member and Secretary, 1951.

The Secretary testified that the local Commission meets on an average once a year. If important matters arise, he communicates with the Chairman, who calls a meeting. Minutes are kept by the Secretary.

In 1961, complaints about pilotage were made by the Caraquet Chamber of Commerce and a local member of Parliament wrote to the Department of Transport. The Pilotage Commission discussed three complaints with the Chamber of Commerce who seemed satisfied with the explanation given. The Secretary is of the opinion that partisan politics were involved. He added that whenever the Government changes there is pressure to appoint new pilots and a new Harbour Master because there is so much unemployment. Captain F. S. Slocombe of the Department of Transport stated that at the time of these complaints, the Department was not receiving the Pilotage Authority's annual reports, or any other information. Hence, the Department wrote to the Secretary that, since the activities of the District were decreasing, the Department was considering recommending its abolition. This letter received a speedy reply, there has been a marked improvement in cooperation ever since and no further problems have arisen.

The Secretary despatches the pilot(s) (when there are two they are despatched in turn), keeps all records, collects pilotage dues from agents and, after deducting his share of 8%, pays the pilots, who in turn pay the boatman of the hired fishing boat that acts as pilot boat. The pilot boat does not carry a licence from the Authority as called for in the By-law, subsec. 24(1). The Secretary also prepares annual reports and submits them to the Minister of Transport.

3. PILOTS

According to the By-law, pilots are recruited from the general public. There is neither apprenticeship nor a requirement for a marine certificate, or experience at sea or in local waters. The By-law merely requires that a candidate be not over sixty years of age, be in good health and of good character, and has proved to a Board of Examiners that he has the general and local knowledge necessary to become a pilot. His skill is to be appraised during his probationary period. Although the licensing procedure as set out in the By-law is not followed strictly, the Pilotage Authority is effectively ensuring that only qualified candidates are licensed.

For the last twenty-five years, the number of pilots on strength has been two but, due to the limited demand, pilotage service has been provided by only one pilot since 1963. That year the second pilot, Prudent Lanteigne, was given leave of absence to enable him to be appointed Master of a local trawler. In 1965, he returned to pilotage duties and the other pilot, Denis Lanteigne, was given similar leave of absence.

In view of the small remuneration derived from pilotage the pilots must have additional employment to supplement their income, provided at least one of them is readily available when needed. When the pilots are not on extended leave of absence, they keep the Secretary informed of their whereabouts.

The By-law provisions regarding despatching and pooling are obviously not requisite for that type of pilotage organization and should be amended realistically.

In 1962, two younger pilots were licensed to replace the two previous pilots who had to retire on account of age, having been licensed in 1937 and 1950 respectively.

The vacancies were not advertised. The Commission let it be known that two pilots were required and three applicants presented themselves. The Authority did not convene a Board of Examiners but carried out its own informal investigation of the competency of the candidates, which possibly was the best procedure in the circumstances. First, they consulted the retiring pilots and on their recommendation rejected one applicant who was considered unqualified to take examinations because he had had very little relevant experience. Then they arranged for the other two candidates to be examined for competency by Capt. Dubé, a Quebec District licensed pilot, who was then conducting courses in navigation at the fisheries school at Caraquet. The verbal examination, which lasted two evenings, covered aids to navigation, signals, tides and currents, charts, manoeuvring, berthing and allied subjects. Eyesight and hearing tests were conducted by a Caraquet doctor. The candidates, Mr. Denis Lanteigne and Mr. Prudent Lanteigne, passed these examinations and were granted permanent pilot's licences.

One of the candidates had served at sea in the merchant marine during the war and had, on one occasion, piloted the Irving owned *Seekonk* when a licensed pilot was unavailable. Both had local knowledge of the District gained in fishing vessels which use the same channel as other ships.

In the last decade, there have been no shipping casualties or incidents reported. However, the Commission was informed that in December, 1960, a ship grounded on the sand bar near the wharf due to a strong wind but freed herself without damage. This has been the only accident since the Secretary took office in 1951.

The Secretary reported that there had been only one occasion when a pilot was disciplined. In 1959, a pilot, now retired, was suspended for two weeks because he had been intoxicated several times and was giving poor service.

4. PILOTAGE OPERATIONS

Normally, requests for pilotage are addressed to the Secretary who then notifies the pilot. When there were two pilots, they normally took turns unless one was not available. The practice was for the pilot who brought a ship in to pilot her out. The pilots embark in the area west of the seaward buoy marking the entrance to Shippegan Channel, a distance of approximately ten miles from Young's wharf. It takes about one hour for the pilot vessel to travel from Caraquet to the boarding area and from one and a half to two hours to pilot a ship in to her berth, and about the same time to clear outbound. The pilot boat follows outgoing ships to disembark the pilot.

Neither the Authority nor the pilot owns or operates a pilot boat because its earnings would be insufficient to cover expenses. Boats are hired as required, and it is the pilot's responsibility to make the necessary arrangements with local fishermen. The \$10 pilot boat charge is paid to the pilot, together with the other pilotage dues earned by him. The cost of boat hire is generally fifteen dollars, i.e., ten dollars for the boat and five dollars for the boatman but sometimes the pilot is able to make a better deal. The various boats so used are not licensed by the Pilotage Authority.

In adverse weather, a boat is required to handle ship's lines. In such a case, an additional charge of ten dollars is made against the ship (for comments, vide p. 400).

Re the extent of the workload, vide p. 415.

5. TARIFF, PILOT'S REMUNERATION AND FINANCIAL ADMINISTRATION

The pilots' remuneration is supposed to be an equal share of the net pilotage receipts of the District. This procedure was followed when there were two actual pilots but now there is only one and the net receipts belong

to him. The only item of expenditure listed in the annual reports is the remuneration of the Secretary which amounts to 8% of the gross receipts of the District. There is no entry with regard to the other necessary items of expenses—telephone, stationery and postage. It is assumed that the same procedure that prevails at Bathurst is followed here (p. 403). The linesman's fees are collected by the Secretary and entered into the Pilotage Fund and the pool as if they were pilotage dues. The annual returns show only the aggregate receipts without segregating pilot boat charges and linesman's fees from the dues earned by the pilot's services.

The amount shown on the financial report as having been paid to the pilot is not his net income, in that it comprises the pilot boat and linesman's charges (less 8% retained by the Secretary). The pilot must pay out of this income the cost of boat hire and the line service fee to the boatman.

Assuming that the small items of expenditure, such as postage, are disregarded, and that pilot boat and linesman's charges average fifteen dollars each time a boat is hired, the distribution of pilotage revenues appears as follows:

Year	Number of Pilots Sharing	Gross Earnings	Secretary Treasurer's Remun- eration	Postage	Pilot Boat and Linemans Cost to the Pilots	Aggregate Net Earnings	Individual Pilot's Net Income
1959.....	2	\$ 2,005.34	\$ 160.42	—	\$ 225.00	\$ 1,619.92	\$ 809.96
1960.....	2	582.50	46.60	—	75.00	460.90	230.45
1961.....	2	3,405.25	272.42	—	360.00	2,772.83	1,386.41
1962.....	2	3,372.03	269.76	—	330.00	2,772.27	1,386.13
1963.....	1	1,427.30	114.18	—	165.00	1,148.12	1,148.12
1964.....	1	2,915.68	169.25	\$ 21.30	330.00	2,395.13	2,395.13
1965.....	2	5,358.54	428.68	1.30	510.00	4,418.56	2,209.28
1966.....	1	3,085.46	246.83	—	375.00	2,463.63	2,463.63
1967.....	1	3,225.11	258.00	—	315.00	2,652.11	2,652.11

The pilots have no welfare scheme or pension benefits.

COMMENTS

In general, the District is administered efficiently and realistically and the pilotage service is adequate for local needs.

The limits of the District appear over-extended. Since no pilotage is performed between Maisonnnette Point and Grande Anse and it is unlikely any services will be required there in the near future, it is considered that the limits should be redefined to include only the port of Caraquet and its approaches.

The limited demand for pilotage services does not warrant more than two pilots nor is it necessary to forbid them to accept other employment. It

is commendable to arrange, as at present, for a regular pilot and a relief pilot, provided the Pilotage Authority ensures that the relief pilot has sufficient opportunities to navigate in the District in order to maintain his *expertise*.

The pilotage rates are low in comparison with Bathurst and Restigouche. It is realized this may be due to the fact that the majority of vessels employing pilots are small. However, once again it is believed that the best system would be a rate in the form of a price per ton of maximum gross tonnage with a minimum charge.

The local regulations should be rewritten to meet local requirements and not to resemble those in other Districts.

Subsection IV

PILOTAGE DISTRICT OF MIRAMICHI, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Apart from Orders in Council concerning appointments, all the special legislation for this District is contained in two Orders from the Governor General and the District General By-law as amended. (Vide also p. 428 re the *harbour regulation* of 1933.)

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The District was created by an Order of the Governor in Council on May 7, 1874 (P.C. 502, Ex. 1513(a)) which fixed its limits, appointed a five-member commission as its Pilotage Authority and made the payment of dues compulsory. The provisions in this Order in Council governing the creation of the District and the compulsory payment of dues are still in force.

The Pilotage Authority is still a commission composed of five members whose respective appointments range from 1952 to 1966. The present Chairman, Mr. Wallace P. Anderson, was appointed as such on April 1, 1966, and has been a commissioner since 1948. On April 1, 1966, Mr. K. R. Bruun was appointed Secretary and Treasurer to replace Mr. R. A. Walls who had been Secretary for twenty-six years.

The District limits were amended only once, on January 26, 1939 (P.C. 176, Ex. 1513(b)), as follows:

"To include all the coastal waters of the County of Northumberland, N.B., inside an imaginery (sic) line drawn from Morin Point to the north end of Portage Island, thence in a south-easterly direction to Buoy No. 1 in Miramichi Bay being 47°07'07" North Latitude, and 64°46'49" West Longitude, thence in a southerly direction to the lighthouse on Escuminac Point, and including all the tributary waters flowing thereinto."

(2) REGULATIONS ADOPTED BY THE PILOTAGE AUTHORITY

The present General By-law (approved by Order in Council, P.C. 1958-576 dated April 23, 1958 (Ex. 21)) was made at the time the regulations of most Commission Districts were revised mainly to make them

uniform. The result was, except for some provisions interjected locally, a series of regulations similar to those in other Districts, which frequently, but especially in this District, do not conform to actual practice or to District requirements. The General By-law was amended twice by Order in Council, P.C. 1961-1070 dated July 24, 1961, and by Order in Council, P.C. 1964-2021 dated December 23, 1964. Its main features are as follows:

- (a) Pilotage is controlled and the Secretary is responsible for the direction of pilots. There is no provision for a Master Pilot.
- (b) The Secretary's remuneration is fixed at 5% of the gross receipts of the District. (Increased to 6% March, 1969.)
- (c) Pilots are recruited through a four-year apprenticeship and can not be licensed unless they are under forty-five years of age, in good health and of good character, and have successfully passed an examination on nautical and local knowledge before a Board of Examiners. Skill is assessed during a probationary period, the duration of which is left to the discretion of the Pilotage Authority, as is also the remuneration to be paid to probationary pilots.
- (d) If a qualified apprentice is not available when a vacancy occurs, a mariner holding a certificate not lower than First Mate, Home-Trade Steamship, or Master, Inland Waters Steamship, and possessing the other qualifications, may be licensed, commencing as a probationary pilot.
- (e) The pilots' remuneration is an equal share, on the basis of time worked, in the net revenue of the District, i.e., after all operating expenses, including the compulsory deduction for the pension scheme, are made. The monthly shares are estimated on dues earned, while the final payment at the end of the year is based on money actually received during the year. Absence from duty, whatever the cause does not count for sharing under any circumstances.
- (f) The usual provisions regarding leave of absence have been retained, modified only to indicate that, in each case, leave is always without pay. Some meaningless provisions which will be studied later have resulted.
- (g) The By-law purports to modify some of the absolute exemptions to the compulsory payment system listed in sec. 346 C.S.A., e.g., *inter alia*, by restricting the various absolute exemptions (vide Part I, p. 228) granted to vessels of dominion registry to Canadian vessels. Such provisions are *ultra vires* and, therefore, null and of no effect. At the same time, all the relevant exemptions regarding dominion registered coastal and inland trading vessels were withdrawn, which is legal for those exceeding 250 N.R.T.
- (h) The pension scheme is based on the purchase of Government annuities.

- (i) The 1964 amendment provided for the creation of a "Maintenance Fund" consisting of the pilot boat charges for the upkeep, maintenance and repair of the pilot boats belonging to the Authority.
- (j) The voyage charge, as in the other Commission Districts, is based on both draught and tonnage but the distinction between power-driven vessels and those that are not was not retained, despite the fact that the term is still defined in the By-law interpretation section. The rates are \$2.50 per foot draught and 3¢ per N.R.T. The pilot boat charge is \$10 and the moorage charge \$30.

2. HISTORY OF LEGISLATION

In pre-Confederation days, pilotage within the County of Northumberland, including pilotage at Miramichi, was according to the governing New Brunswick statute, under the Court of the County acting as licensing authority (vide pp. 34 and ff.).

The first limits of the District, which were established by P.C. 502 of May 7, 1874¹, comprised all the coast of the Gulf of St. Lawrence from Miscou Point in the County of Gloucester to Kouchibouguac River in the County of Kent, and extended seaward to the Magdalen Islands. A commission of five was appointed as Pilotage Authority composed of members residing in Newcastle, Chatham and Douglastown. The payment of dues was made compulsory.

One month later, on June 17, 1874, the first *Rules and Regulations* for the District were approved by the Governor in Council (Order in Council, P.C. 791, Ex. 1513(d)). These were merely interim regulations which amended the pre-Confederation rules enacted by the Northumberland Sessions for the government of pilots.

A few months later, a complete set of regulations was approved by Order in Council (P.C. 336 of April 10, 1875, Ex. 1513(e)), entitled "Rules and Regulations for the Government of Pilots for the Port of Miramichi". They provided rules for the free exercise of the pilotage profession. Pilots were recruited through a four-year apprenticeship to be served on board a licensed pilot boat, and each pilot had to be the owner of his own pilot boat.

The requirement for each pilot to own his pilot vessel of suitable seaworthy qualities to meet vessels at the seaward limit of the District, i.e., in the neighbourhood of the Magdalen Islands, had proven to be too heavy a

¹ It may be argued that the District had been created some months earlier, evidenced by Order in Council, P.C. 432 of April 21, 1874, providing for the replacement as a member of the Miramichi Pilotage Authority, of one Thomas F. Gillespie, who had resigned, by the Hon. Richard Hutchinson (Ex. 1513(c)). This would indicate that the Board of Commissioners had already been appointed. However, Order in Council, P.C. 502, made fifteen days' later, is a completely self-contained Order for the creation of the District. The Hon. Richard Hutchinson is mentioned as one of the Commissioners and no reference is made to any previous Orders that were abrogated, amended or superseded.

financial burden for the individual pilots. In 1882, by an amendment to the By-law, the system of companies for the support of pilot vessels was instituted. The pilots were divided into four groups for the ownership and operation of one suitable schooner per group.

One indirect effect of the re-organization was the disappearance of individual competition and the incentive for each pilot to earn more. In 1892, twenty-seven Italian ship Masters who called regularly at Miramichi addressed a petition to the Minister of Marine and Fisheries complaining that the service had gravely deteriorated since the institution of the new system, the pilots were no longer on the look-out for vessels at the seaward District limits near the Magdalen Islands and vessels had to make closer approach to embark a pilot regardless of weather. They reported that four vessels were stranded on the shores of Miramichi Bay during a storm in August 1892 because pilots were not available and recommended a return to the pre-1882 free enterprise system. The petition was endorsed by one group of pilots and a number of merchants in the area (appendix to Order in Council, P.C. 782 of April 12, 1893, Ex. 1513(f)).

The matter was referred by the Minister to the Pilotage Authority for immediate action. The other group of pilots made a counter petition opposing a return to the previous system. When the Minister realized that the Pilotage Authority was unable to arrive at the right solution, he recommended an appropriate Order, which was approved and issued by the Governor in Council (P.C. 782 of April 12, 1893, Ex. 1513(f)) dismissing the members of the Pilotage Authority *en bloc* for lack of interest in shipping and apparent inability to control and manage pilotage affairs. A new Board was appointed. Four of the new Commissioners were shipowners and exporters, all local residents engaged in shipping.

The new Authority made new regulations which were approved by Order in Council (P.C. 1534 of May 19, 1894, Ex. 1513(g)). A transitional period ensued when steamships gradually superseded sailing vessels as reflected in the By-law.

The main changes were:

- (a) A pilot vessel with two or more pilots aboard had to be kept constantly on station and under sail off Escuminac Point (the present boarding station) which was well inside the seaward limit of the District but at the entrance to confined waters.
- (b) Pilotage was fully controlled. The pilots were obliged to take charge of the pilot vessels in turn and accept assignments according to a tour de rôle as directed by a person appointed for that purpose. Pilotage earnings were payable to the Authority, collected by the Secretary and shared equally among all the pilots after payment of the operating expenses of the District.
- (c) The advent of steamships was marked by the imposition of a surcharge on these vessels of 2¢ per N.R.T.

By 1883, the number of pilots had increased out of all proportion to requirements. The 1882 By-law amendment provided that, subject to the acquired rights of the then apprentices, new pilots would not be appointed until their number fell to thirty. This clause did not appear in the 1894 regulations, although there were still more pilots than required, but the authority and the pilots had a general understanding that the number would not exceed twenty.

New problems soon developed. In 1899, the Pilotage Authority, without consulting the pilots, had reduced the rates and increased exemptions from the compulsory payment of dues (Ex. 1513(h)). When the pilots learned about the new regulations, they notified the Authority that they did not accept them and threatened to resign unless the new rates were repealed or modified. But the Pilotage Authority would not relent with the result that the pilots, now twenty in number, went on strike May 23, 1899, by resigning their licences *en bloc*. Three or four large steamers were in port, loaded and ready for sea, and their draught was such that, unless they departed at high tide that day they would be delayed for ten or twelve days to await the next high tides. The Authority, anticipating the pilots' action had amended its By-laws (approved twice the same day by the Governor in Council by P.C. 1078 and P.C. 1083, both of May 20, 1899, and to the same effect (Exs. 1513(i) and (j)) to empower it to issue a pilot's licence to any person considered competent. Four new pilots were appointed forthwith, the ships sailed on time and the pilotage service was maintained.

Since the strike caused much confusion in the District, the Minister appointed a Capt. Bloomfield to hold an investigation into the causes of the strike with an added mandate to endeavour to settle it. The investigation was held and recommendations made but they failed to achieve an amicable settlement.

At that stage, the Attorney General of the Province of New Brunswick entered into the dispute by seeking a court injunction to prevent the four newly-licensed pilots from acting as such, challenging the validity of their licensing. The petition was dismissed by the court on the ground that, there being no pretense that the appointments had not been made in good faith, the office of licensed pilot being public, and the issue being the validity of the licensing, the remedy if any was not by injunction but by information in the nature of a *quo warranto* (Attorney General of New Brunswick v Miller et al., 2 N.B. Equity Reports, p. 28; vide also Part I, p. 65). The pilots also instituted other injunction proceedings on their own.

No doubt the failures in court, heavy legal costs, and the loss of earnings finally made the pilots more amenable to a settlement, and a written agreement was signed April 21, 1900, by the pilots' Negotiation Committee and the Pilotage Authority. Apart from some modifications to the controversial By-law, it provided for the abandonment of the pending court proceedings, the re-establishment of the former pilots, the retention of the

new pilots, the division of the pilots into three groups instead of two, each group possessing its own pilot vessel and competing for employment against each other and the payment out of District earnings of the court and legal costs, if the Pilotage Authority failed in its endeavour to have them paid by the Federal Government out of public funds.

On May 15, 1900, by Order in Council, P.C. 1165 (Ex. 1513(k)), the pilots' request for financial assistance was partially granted and the Pilotage Authority was given \$600 out of public funds towards the payment of part of the costs incurred in the litigation.

In order to give effect to the agreement, the By-law was amended (approved by Order in Council, P.C. 1341 dated May 24, 1900, Ex. 1513(m)).

In 1918, the organization and administration of the District came under the terms of reference of the Robb Royal Commission (p. 47). The Commission found (Ex. 1328) that the District was efficiently administered. It noted that the number of pilots had been reduced from thirty-nine in 1893 with four pilot schooners, to twenty with three pilot schooners between 1900 and 1910, and to sixteen with two pilot schooners up to the autumn of 1917 when one of the two pilot schooners was lost. The largest pilot schooner was owned by eleven pilots and the other by five. Since its loss, it was reported that the pilots who had owned it were unable to earn their living because they lacked a vessel of their own or shares in another. The pilots' earnings were pooled and deductions were made from the earnings of each pilot to pay for his share of the cost and maintenance of the pilot schooner of which they were co-owners. (This explains the variations in their "take home pay".) The Commission found that due to decreasing shipments by water the earnings of the pilots were exceedingly low while their number was too great. It was also found that four of the pilots were over seventy years of age. At that time, the Canada Shipping Act did not contain a provision for an ultimate age limit of seventy but each Pilotage Authority had the power to fix such ultimate limit from sixty-five years and over. The District By-law did not contain any such provision. The Commission deplored the absence of a Pilot Fund. It noted that, in 1882, some of the pilots had formed a club with the idea of instituting a superannuation fund but opinions were divided and the scheme did not develop. However, the pilots assisted each other during illness by not making any deductions from shares in the pool for periods of absence and approving allowances for widows of deceased pilots for short periods. This latter practice had to be discontinued owing to lack of funds.

The Commission recommended:

- (a) the number of pilots be reduced to twelve;
- (b) to attain this aim the four overage pilots be compulsorily retired;

- (c) in view of the absence of a pension fund, these four pilots be granted in compensation for their lost rights an annual pension of \$300, following the precedent established by the Government in 1905 in the Quebec District (Part I, p. 119);
- (d) in the public interest, the pilot vessel service be taken over from the pilots and operated by the Pilotage Authority under a subsidy from the Federal Government until such time as the average annual income per pilot reaches \$750;
- (e) a superannuation fund be established.

Little, if anything was done to implement these recommendations. The new 1926 By-law (sanctioned by P.C. 1577 dated Oct. 12, 1926, Ex. 1513(u)) confirmed the rights of the pilots to remain in the service after the age of 70 by making retirement voluntary irrespective of age provided they remained fit and competent. It was not until 1937 that a pension scheme was adopted.

The 1926 By-law retained the governing features of the repealed By-law. The main change was an extension to qualified mariners of the opportunity to become pilots in case there were no apprentices available when vacancies occurred.

Miramichi has not always been exempt from partisan political considerations. The fact that a position of Pilot Commissioner was a political reward at one time is clearly enunciated in Order in Council, P.C. 2118/65 of December 23, 1926 (Ex. 1513(v)) which cancelled the appointment of a Commissioner because it was made by the former Government on the eve of its resignation. The report of the Minister of Marine and Fisheries, which is cited in the Order in Council, reads as follows:

"1. That by Order-in-Council of the 23rd September, 1926, P.C. 128/1437, Mr. J. W. Brankley of Newcastle, N.B., was appointed a Pilot Commissioner for the pilotage district of Miramichi.

2. That the said Order-in-Council issued on the day preceding the resignation of the then Government after said Government has sustained defeat at the polls.

The undersigned, therefore, recommends that the said Order-in-Council of the 23rd September, 1926, P.C. 128/1437, be cancelled. He further recommends that Mr. G. P. Burchill of Nelson, N.B., be appointed a Pilot Commissioner for the pilotage district of Miramichi."

In 1933, the Minister of Marine, on the recommendation of the Pilotage Authority, recommended a harbour regulation controlling the movement of vessels through the draw span of the Morrissey Bridge within the limits of the harbour of Newcastle. The requested regulation was enacted by Order in Council, P.C. 1125 dated June 9, 1933, Ex. 1513(w) under Sec. 836, 1927 C.S.A. (now Sec. 604 C.S.A.). It prohibited the passage of vessels in excess of 160 tons, through the draw span except against the tide, and established that the pilot of the vessel would be the authority to determine the time such passage could be made. This regulation appears to be still in effect.

The 1933 By-law was amended from time to time. The main amendment was the introduction, for the first time, of a pension scheme in a form that was unique, at that time, i.e., the annuity-purchasing formula whereby the benefits had a direct relation to contributions and, therefore, there could be no actuarial deficit or surplus. This scheme is still in existence today. No doubt this was made possible because of the qualifications of the members of the Pilotage Authority who were all businessmen and well versed in financial affairs and had realized the inherent weaknesses of the pension systems existing in other Districts.

On June 30, 1938, the District of Shippegan had been created by a division of the Caraquet District and it was found that its limit in the Gulf of St. Lawrence as then defined, overlapped the Miramichi District territory in an area where no pilotage was being performed by the Miramichi pilots. Hence, on January 26, 1939, by Order in Council, P.C. 176, the Governor in Council corrected the situation by reducing the Miramichi District limits to meet the Districts requirements. These new limits (vide p. 422), have not been amended since.

In 1939, a new General By-law was approved (P.C. 807 dated April 5, 1939, Ex. 1513(z)). It was mostly a consolidation. *Inter alia*, it prohibited the pilots from proceeding outside the District limits to board vessels. This By-law was superseded in 1958 by the current General By-law which was drafted mainly for the purpose of making it uniform in draftmanship and provisions with those of other similar Districts. The 1958 By-law was amended twice, first, in 1961, to raise the age limit for apprentices from thirty to thirty-seven and, in 1964, to create the "Maintenance Fund" for pilot vessels, to simplify the wording of the tariff, and to raise the dues both for voyages and movages.

Chapter B

BRIEFS

No briefs were submitted.

However, while testifying, the Secretary of the Pilotage Commission read into the record a memorandum containing seven recommendations that the pilots had made to the Authority concerning improved aids to navigation, i.e.,

"1. That the buoys presently in use at Sheldrake Island to the Bar be replaced by larger and brighter lights. Masters of vessels (coming into the District) have complained that they do not show sufficient light."

The Secretary testified that this condition resulted from the fact that there were too many lights in the background.

"2. That the range lights from Leggett Shoal and the Mill Bank range lights be placed on stands so they will show clearly above the trees.

3. That the woods on the east side of Napan Range be cleared further back to permit a clearer view. In heavy weather they are difficult to see as at present.

4. The Cheval, Mill Bank, Hayes and Moody Point lights be changed from white to green lights."

It was complained that with so many electric lights and car headlights behind them it was difficult to distinguish these ranges.

"5. That all lighthouses be painted an orange colour similar to those on the St. Lawrence River.

6. That a red lighted buoy be placed on the outer turn of the cut at Grand Dune; with the Grand Dune light and the head of Fox Island lights in one.

7. That three lighted buoys be placed as follows:

one red lighted buoy at the Swashway;

one black lighted buoy opposite the dredged channel buoy;

one black lighted buoy opposite the Fairway buoy."

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

The District comprises the full extent of the 40 miles of navigable water of the Miramichi River and its approaches in the confines of Miramichi Bay. The service is river pilotage with the usual hazards, but the seaward limits extend to deep water and provide a safe boarding area north of Escuminac Point.

(2) PHYSICAL FEATURES

The boarding station lies four miles due west of a bell-buoy showing a flashing light about three miles due north of Escuminac Point where the pilot station is located. A second bell-buoy showing a flashing light and situated about four miles west of the first buoy marks the entrance to the channel. From this buoy the channel winds for 26 miles to Chatham and a further 4 miles to Newcastle above which the river is navigable for a further 10 miles.

The channel is well marked throughout by buoys of various types. Guides for turns leading to and through the centre of the channel are provided by conspicuous, well defined leading lights and marks.

The ebb and flow of tidal currents off Newcastle and Chatham range from 1 to $2\frac{1}{2}$ knots. Spring tides rise $5\frac{3}{4}$ feet and neaps 4 feet. The controlling depth of the channel at low water is 19 feet, giving a maximum depth at spring tide of about 24 feet. West of and close to Chatham lies a new high level bridge with a clearance of 121 feet above high water. Its supporting piers on each side of the channel are 500 feet apart and large vessels make their transit with no unusual navigational difficulty.

West of and close to Newcastle lies the Morrissey Bridge fitted with a swing span 80 feet wide through which vessels pass to reach the wharves at Nelson. As seen earlier (p. 428), D.O.T. regulations forbid passage through the span for all vessels over 160 tons, except against the tide.

A buoyed channel leads west of Newcastle to the northwest branch of the river which is navigable by vessels of moderate size proceeding to Fraser Mill wharf situated just below the railway bridge. This is a fixed bridge with a vertical clearance of 24 feet at high water which effectively blocks further navigation upstream except for very small craft.

There are periods of fog or poor visibility when vessels have to anchor. Because anchorages are scarce for large vessels along the 40 mile channel, pilots use their own judgment as to visibility and weather before proceeding inward or outward. Good anchorage grounds lie off the southwestern part of Partridge Island at the entrance to the river.

The river freezes over during the winter and the average season of navigation extends from about April 16 to December 8.

(3) PRINCIPAL HARBOURS

The two principal ports are Chatham and Newcastle, both Ports of Entry with Canadian National Railway connections. In between lies the small port of Douglastown and upstream from Newcastle is South Nelson, all with good wharfage facilities. These ports serve their immediate vicinity and local industries, mainly lumber, wood and fish products.

(4) MARITIME AND PILOTAGE TRAFFIC

Traffic consists mainly of vessels engaged in foreign or coastal trade. Most pilotage assignments are for vessels bound for or departing from Chatham or Newcastle. In addition, there are occasional trips to wharves on both banks of the river for pulp wood and wood products.

For Miramichi River arrivals, D.B.S. has segregated only those concerning the two principal ports of Chatham and Newcastle (including Nelson) and the small number of vessels calling at other ports entered under the general heading "Other New Brunswick Ports". It would appear, however, that the number over 250 tons is negligible at Douglastown since the depth of water there is only 16 feet.

The following table is based on D.B.S. statistics for Chatham and Newcastle of ships of 250 NRT and over (Ex. 1483) and traffic statistics contained in the Pilotage Authority's Annual Reports for the whole District.

Year	No. of Pilots	Vessels over 250 NRT at Chatham and Newcastle		Vessels Piloted		Pilotage Assignments		
		Number	Average NRT	Number	Average NRT	Trips	Movages	Total
1958/59....	3	116	1,527.0	111	1,360.2	—	—	—
1959.....	3	117	2,218.8	—	—	—	—	—
1960.....	4	115	1,835.3	115	1,790.4	230	34	264
1961.....	4	147	1,967.1	137	1,920.7	274	43	317
1962.....	4	172	1,870.2	175	1,841.3	350	48	398
1963.....	4	139	2,051.7	156	2,005.7	312	57	375
1964.....	4	192	2,185.1	200	2,056.0	397	134	533
1965.....	4	223	1,952.0	232	1,899.5	461	132	598
1966.....	4	139	2,368.4	145	2,161.3	289	42	331
1967.....	5	119	2,806.3	144	2,363.3	288	62	350

The District returns do not segregate traffic by ports but this is unimportant because there is little difference between the length of pilotage voyages to the various ports of destination. Therefore, it is considered unnecessary to reproduce here detailed D.B.S. statistics regarding traffic at Chatham and Newcastle. It is sufficient to note that more ships call at Newcastle but they are somewhat smaller than those at Chatham.

The District Secretary has reported that the decrease in traffic is due to a number of factors (Ex. 1513 (dd)):

- (a) Exports of pulpwood and lumber have decreased because prices are no longer competitive on overseas markets.
- (b) Shippers of lumber destined to Canadian and U.S. buyers have changed from water to rail and road transportation.
- (c) Pulp and paper products are being sent by rail to other ports for shipment in vessels which can not take a full cargo in the District ports on account of the limitation on draught posed by the shallowness of the channel.

This fact is clearly illustrated by the following figures regarding the all time high in 1965 and the low of 1967:

	No. of Ships		Average NRT	
	1965	1967	1965	1967
Chatham.....	102	37	2,099.9	3,173.6
Newcastle.....	121	82	1,827.3	2,640.5

Coastwise trade predominates at both ports but is proportionately higher at Chatham. This is illustrated by the following average figures for the nine-year period 1959 to 1967.

AVERAGE PER YEAR CARGO HANDLED (Tons)
FOR PERIOD 1959-1967

	Foreign	Coastwise
Chatham.....	67,221.0	152,974.1
Newcastle.....	103,146.6	117,577.7

These statistics show:

- (a) Maritime traffic is directly dependent upon local needs and any fluctuation in the activities of local industries is immediately felt.

- (b) The trend to larger ships is noticeable but a plateau is now being reached on account of the limitations imposed by the nature of the channel. The only recourse would be extensive capital dredging and improvements but the high cost could not be justified from the point of view of economy or public interest.
- (c) Most vessels are engaged in coastwise trade, presumably by regular traders, and coastal tankers would account for a large proportion of this traffic.
- (d) The difference between the average tonnage of total traffic and vessels piloted shows that not all ships employ a pilot, but that a number under 250 NRT do. The hazards along the 40-mile shallow, narrow, crooked channel created by the ebb and flow of changing tides and adverse weather conditions make local knowledge and experience essential for safe navigation. Most vessels, except very small ones, employ pilots.

(5) AIDS TO NAVIGATION

At the Commission's hearing, the pilots made serious complaints and offered suggestions regarding aids to navigation (vide p. 430). Several of these improvement have now been effected and on May 29, 1967, the Department of Transport reported as follows (Ex. 1527):

"Since the spring of 1963 all range lights used by shipping have been equipped with flame orange day targets. Most lights have been changed from battery to hydro power operation and where it has been possible to have this done the intensity has been increased. Also from the start of the shipping channel in Miramichi Bay to Newcastle, lighted buoys have been increased from 4 to 27, and nineteen of these are equipped with radar reflectors."

In 1963, the Commission was informed that navigation was limited to daylight hours, except for very small vessels. However, night navigation should now be possible as a result of improved aids to navigation.

2. ORGANIZATION

Since the District was created in 1874, pilotage operations have been under the control of a Pilotage Authority composed of five local residents, who generally have a direct interest in shipping or local industry and, hence, are vitally concerned with the ports efficiency. This is probably the reason why the District's affairs have generally been conducted in a business-like manner. Although appointments have not always been free of partisan politics (p. 428), this now appears a rare exception, no doubt because pilotage is so important to the locality. Tenure of office has been long as a rule, e.g., the present Chairman, Mr. Wallace P. Anderson, has been a member of the Authority since 1948 and the former Secretary, Mr. R. A. Walls, who retired in 1966, had been in office for 26 years.

Mr. H.S. Burchill, the Chairman at the time of the Commission's public hearing in 1963, testified that all the members of the Commission were shippers who maintained close relations with the pilots and discussed mutual problems with them. The rôle of the Commissioners is confined mostly to questions of policy. He considered the Authority's principal duty was to ensure a sufficient number of qualified pilots were available to handle all traffic and, at the same time, provide them a reasonable remuneration without unduly increasing the rates. He paid tribute to Mr. Walls, their Secretary, who had served the Commission for 23 years conducting 90 per cent of the Commission's business. The Secretary attends to all correspondence, collects pilotage dues, keeps records of all receipts and expenditures, pays the pilots and all expenses, administers the General By-law and records the minutes of all meetings. The work involved is such that a full-time Secretary is not required. As will be seen later, he attends only to outward despatching.

The Commission meets as necessary to decide special issues and at least once annually to approve the Secretary-Treasurer's financial report.

The Secretary-Treasurer's remuneration is now 5% of the gross receipts of the District including pilot boat charges. Prior to 1958, it was 3%. His remuneration in 1967 was \$2,048.09.

3. PILOTS

(1) RECRUITING AND QUALIFICATIONS

According to the annual reports, there were four pilots at the time of the Commission's hearing in 1963. Since that time, one pilot has retired, having reached the age limit, and two apprentices have been granted a pilot's licence bringing their number to five in 1967. As of 1968, there was no apprentice. In fact, however, except for 1967, the number of pilots officially reported was short by one because the holder of a probationary licence was not counted as a pilot for statistical purposes.

The normal method of becoming a pilot is to serve a four-year apprenticeship and it is only when there is a lack of qualified apprentices when a vacancy occurs that a mariner may be licensed. In the case of an apprentice, no marine certificate is required but the mariner must possess a certificate not lower than first mate home trade steamship or Master inland waters steamship. He need not have any actual experience in the District provided he has enough local knowledge to pass the examination.

None of the five pilots holds a marine certificate of competency, but they had all served their full apprenticeship period.

The Chairman of the Pilotage Authority testified that with respect to the procedure for recruitment he considered the licensed pilots the proper persons to advise the Authority on suitable candidates. He expressed the

opinion that advertising in newspapers for applicant apprentice seldom produces satisfactory results. Therefore, they requested the pilots to recommend persons of their choice whom they considered competent and interested.

The apprentices' duties consist generally of operating the pilot vessel, attending to housekeeping and cooking at the pilot station house and accompanying the pilots on their assignments. After two years, the apprentices are given practical instruction accompanying the pilots on assignments. These training requirements are not stipulated in the regulations as they should be.

The Secretary testified that an apprentice receives no salary as such, but is paid \$4.50 a day for operating the pilot vessel. An apprentice considered competent in his third year is issued a probationary pilot licence and paid a salary of half the amount of the regular pilots earnings. There is no authority in the By-law for such action. During this probationary period, he is limited to ships of a certain draught, generally not over 15 feet. This practice was followed, *inter alia*, with the two pilots who recently received their licences (Ex. 1513 (dd)).

The age limit to be licensed as a pilot is 45. This is realistic. The maximum age limit to become an apprentice was 30 up to 1961 but that year it was extended to 37, no doubt to deal with special cases.

Despite the By-law requirement, an apprentice's qualifications are not assessed by a Board of Examiners. A pilot's licence is granted when an additional pilot is required and the apprentice is considered competent to pilot as shown by the pilots' recommendations and the candidates behaviour, work and record. Again, despite the By-law requirement, the first licence is probationary only when granted to an apprentice who has not completed his four-year apprenticeship.

(2) CASUALTIES

The records indicate that during the years 1960-67 there were 14 shipping casualties, all while navigating but only one of a major character. They illustrate clearly the difficulties encountered. None occurred while berthing or unberthing. On the other hand, because of the nature of the channel, as well as silting, a number of them were merely incidents, i.e., touching bottom in the channel which caused no damage to the ships involved. Three groundings occurred, due to ice conditions, late in the season in 1964 and 1966 on the Horse Shoe Bar at South Nelson, but without damage.

The two most serious accidents occurred at the Morrissey Bridge:

- (a) November 15, 1965, S.S. *Northfield* struck the swing span; there was no damage to the ship but the span was displaced.

- (b) June 4, 1967, the 6,000-ton tanker *Liquilassie* struck the bridge causing heavy damage. The bridge was out of commission for about three months and traffic was rerouted. The estimated cost of repairs to the bridge was \$150,000 and to the ship \$25,000. The cause was stated to be loss of control due to underwater currents.

Available records fix responsibility in only two cases: (i) a grounding without damage at Robichaud Spit in 1965 which was attributed to pilot's error; (ii) the *Liquilassie* accident which a Preliminary Inquiry found was due to "an error of judgment on the part of both the pilot and the master of the vessel" in deciding to "pass through the bridge at an hour so close to the time of the turn of the tide stream". Both were warned by letter but no further action was taken by the Minister of Transport under Part VIII C.S.A. (Ex. 1513 (gg)).

COMMENTS

The ship handling prerequisites for pilots are the same in this District as in the Restigouche District (vide comments p. 373). It is suggested that candidates could qualify for a minimum marine certificate of competency during their apprenticeship period as is the practice, for instance in the Quebec and Montreal Districts. Such a certificate will become a prerequisite for a licence if the Commission's Recommendation No. 13, Part I, p. 494, is implemented.

To grant a licence without an appraisal of the candidate's qualifications by disinterested persons is dangerous because, in addition to the risk of biased opinions, the level of competence may be lowered instead of raised as it should be to meet the ever changing requirements of the service.

The procedures set out in the regulations should be strictly followed; if they prove inadequate, the regulations should be amended to meet local requirements and then strictly adhered to.

4. PILOTAGE OPERATIONS

(1) PILOT STATION AND BOARDING STATION

The pilots maintain a pilot station at Point Escuminac some four miles south of the District boarding area. Originally the District regulations defined the boarding area and made it an obligation for the pilots to keep a vessel cruising there. These provisions were not retained and the procedure was slightly modified. The pilot vessel is now stationed nearby enabling the pilots to meet an incoming ship at short notice. The pilots have a pilot house at Point Escuminac where they remain in sufficient numbers to meet inward requirements; the apprentice also lives there.

The pilot house was built and is owned by the pilots, but the cost of maintaining it and operating the station, i.e., light, telephone, taxes and food provisions, is paid out of the pilotage fund. An unwritten agreement restricts ownership to the active pilots and ensures them of equal rights. The share of a pilot who ceases to be on strength has to be purchased by the pilot who replaces him and, if he is not replaced, by the remaining pilots. When the number of pilots is increased, an equal share is sold by all the pilots to the newcomer. The value of a share is established by the pilots among themselves. The price is usually paid in instalments deducted by the Secretary from the new pilot's earnings (Ex. 1513 (ff)).

The decision to establish a pilot vessel base as near as possible to a boarding station and maintain a pilot station nearby is determined partly by financial considerations and partly by the desirability of not wasting the pilots' time in extensive travelling. The governing factors are the demand for pilots at the boarding station, the distance between the port or ports of destination, and the boarding area, the practicability of establishing the pilot vessel base near the boarding area and the cost and time involved in transporting pilots from their residence to the pilot vessel base.

Whenever the port of destination is a considerable distance from the boarding station (as is the case here), it is important to establish a pilot vessel base close to the boarding area, provided an adequate site is available in order to avoid the extensive travelling by the pilot vessel (p. 217), and the large operating costs involved.

However, a pilot station should now be maintained only if it is clearly uneconomical to make pilots available by other methods. Such a station was absolutely necessary when the only means of ship-to-shore communication was visual, but with radio, notices of arrival may now be given with great accuracy many hours in advance, generally allowing more than sufficient time for pilots to travel from their home to the pilot vessel base before ships arrive. In the Quebec District, the long distance between the harbour of Quebec and the seaward boarding station off Les Escoumains makes it impractical to have pilots travel from their residence in Quebec City to the boarding station and, therefore, a pilot station must be maintained at Les Escoumains. The opposite situation now prevails in the New Westminster District which has made it possible to dispense with the pilot station at Steveston (Part II, p. 337), thus allowing the pilots to remain at home between assignments and improving their working conditions considerably.

At first sight, it would appear that the pilot station at Point Escuminac could be dispensed with, but the various factors involved should be fully appraised. Some of these are not known to this Commission but some are clear: there appear to be good roads; the cost of maintaining the pilot station is substantial (expenses for pilot house and provisions were \$1,211.73 in 1965 and \$1,101.44 in 1967), and the daily requirement for pilots at

the boarding area is small (on the average, the pilot vessel is used once a day either to embark or disembark a pilot). The cost of maintaining this pilot station does not appear to be justified.

If, however, it is to be retained, its title should not be held by the pilots unless the registered title contains safeguards to ensure that ownership remains with the active pilots and that the price of a share at the date of purchase is objectively established. Otherwise, unwarranted consequences may result, e.g., a forced sale in justice when the estate of a deceased pilot is liquidated or undue speculation, as occurred in the Quebec District (vide Part I, p. 552). No doubt the land title was registered in the name of the pilots to avoid the complication of having it registered in the names of the individual Pilot Commissioners as was done at one time in the New Westminster District (Part II, p. 338). This objection will be met if the Pilotage Authority and the pilots of each District are granted a corporate status as recommended (General Recommendations 18 and 25, Part I, pp. 510 and 549).

It is considered that registration showing each Pilot Commissioner as co-owner of a pilot vessel would be illegal because it would not conform to the factual situation. If corporate status is granted to the Pilotage Authority as recommended (General Recommendation 18, Part I, p. 510), the question will present no difficulty in future. As discussed in Part I of the Report (p. 318), the Pilotage Authority has a legal identity of its own under present legislation. Its powers of ownership are ancillary to those given it in Part VI C.S.A., but the power to operate a pilot vessel service itself is not one of them; therefore, at present, neither directly nor indirectly can a Pilotage Authority own a pilot vessel. This situation can be made legal only through new statutory legislation.

The Authority verbally appoints the senior pilot as the general supervisor of pilot boat operations and it is normally the responsibility of the apprentices to man the boat. When a relief vessel is required, a boat is hired on a per trip basis.

It has been the practice to segregate receipts from pilot boat charges (less the 5% remuneration for the Secretary) in a separate account called the *Boat Fund* which is used solely for the upkeep, maintenance and repair of the pilot vessel. The apprentice's remuneration of \$4.50 per day for operating the pilot vessel is paid out of this fund. The Secretary testified that, on December 31, 1962, the remaining balance was \$4,526. By By-law amendment, which was approved on December 23, 1964 (P.C. 1964-2021), the practice was given legislative sanction by setting up a *Maintenance Fund*.

It is considered that the system is desirable in that it enables the Pilotage Authority to form a reserve for future expenditures. In fact the *Maintenance Fund* was used in 1966 for the purchase of a new pilot vessel without obliging the Pilotage Authority to ask for a bank loan (as the New West-

minster Pilotage Authority was obliged to [Part II, p. 322]) or seek financial assistance from the Government (as was the practice in various Districts). Since a loan must be repaid in substantial instalments, the pilots' earnings are considerably reduced during the period concerned. Apart from the present irregularity of the Pilotage Authority owning a pilot vessel, it is possible this regulation might be justified under subsection 329(c) C.S.A. This is a logical and adequate procedure which should be authorized in the new legislation proposed by this Commission.

(2) DESPATCHING

According to the By-law, it is the Secretary's responsibility to attend to despatching and this would normally follow a tour de rôle system. However, a more practical procedure which meets the pilotage requirements of the District is being followed.

Responsibility for the provision of services is shared between the Secretary and a Pilot Master, who is generally the senior pilot. The Secretary deals with requests for outward assignments and movages while the Master Pilot is responsible for pilot vessel services, the pilot station at Point Escuminac and inward assignments. The agents are well aware of these arrangements and direct their requests either to the Secretary's office or the pilot station.

When there were four pilots and one apprentice, two pilots remained at Chatham and the other two, together with the apprentice, stayed at the pilot station, the apprentice normally manning the pilot vessel. If a pilot is not readily available at Chatham to take a ship outbound, one is assigned from the pilot station at Escuminac. He proceeds thirty miles by land to Chatham at a cost of eight dollars.

An assignment is normally on the basis of a one-way trip, but it has been the practice for the pilot to remain on board a ship, such as a tanker which discharges cargo immediately upon arrival and is ready for departure a few hours later, and handle the outward trip.

Every endeavour is made to divide assignments equally among all pilots and no complaints were registered on that score.

COMMENTS

The procedure being followed is realistic. Too rigid adherence to a tour de rôle results in an unnecessary wastage of pilots' time and money due to increased travelling. Provided no pilot is overworked, advantage should be taken of a pilot being in a locality where services are requested, it being understood that the person in charge of despatching ensures that assignments are equitably divided in the long run. This practice is facilitated by the small number of pilots but the number on establishment should never be a bar to realistic despatching.

The other main factor in despatching, i.e., selecting the appropriate pilot for special or difficult assignments, should also be remembered. This requires intelligent, active participation by the person in charge of despatching. In most Districts, despatching authorities tend to avoid taking any responsibility and entrench themselves behind a strict *tour de rôle*, thus giving the appearance of equity and protecting themselves from possible criticism by some pilots. By so doing, despatching authorities fail to discharge their duty, lower service efficiency, and cause much unnecessary expense to be incurred.

(3) WORKLOAD

The Pilotage Authority's annual returns give no information about the pilots' actual workload or the distribution of work during the navigation season, but list the total number of assignments per year divided into trips and movages. These figures, together with testimony at the hearing, supply a reasonably accurate picture of workload.

The following table, which is derived from information in the annual reports, shows for the years 1960 to 1967 the number of trips, movages and total assignments performed in the District each year. On the assumption that the workload is shared equally between the pilots on strength, averages per pilot on strength were established per year, per week and per day. The navigation season was defined as somewhat less than eight months ranging approximately from April 15 to December 10, i.e., 34 weeks or 238 days.

Year	Assignments			Pilots on Establish- ment	Average Share of Total per Pilot on Establishment		
	Trips	Movages	Total		Per Year	Per Week	Per Day
1960.....	230	34	264	4	66.0	1.9	.28
1961.....	274	43	317	4	79.3	2.3	.33
1962.....	350	48	398	4	99.5	2.8	.42
1963.....	312	57	375	4	93.8	2.7	.39
1964.....	397	134	533	4	133.3	3.8	.56
1965.....	461	132	598	4	149.5	4.3	.63
1966.....	289	42	331	4	82.8	2.4	.35
1967.....	288	62	350	5	70.0	2.0	.29

In some years, e.g., from 1963 to 1966 inclusive, the averages per pilot were, in fact, even somewhat lower on account of the erroneous practice of not including for statistical purposes the apprentice who held a probationary licence and took his share of assignments.

The Commission was told that traffic is fairly regular but a number of ships occasionally arrive or depart close together.

The maximum workload per pilot per week in the years 1960 to 1967 was approximately 26 hours, an all-time peak which was reached in 1965, compared with 12 hours per week in 1967. These are very liberal figures because the work done by the apprentice pilot is not deducted and in this calculation movages are shown as trips, despite the fact they are always of much shorter duration. They also include travelling time as if the pilot travelled on each occasion by land 1 hour and 40 minutes from or to Point Escuminac pilot station. Pilot J. S. Preston testified that it takes pilots about twenty minutes to board vessels from their pilot station and 3½ to 4 hours to pilot a vessel the 32 miles to Newcastle, including berthing, and a little less for the 28 miles to Chatham. For the purpose of the above aggregate figures, 4 hours was taken as the average duration in order to account for trips above Newcastle and occasional delays. Thus, a full trip assignment, including travelling time, would amount to 6 hours.

COMMENTS

The above computation indicates clearly that the average workload of the individual pilot is far from heavy under present arrangements. Even in the peak year of 1965, the average was 4 to 5 trips or movages per pilot per week, i.e., a six-hour work day with two days off per week. In 1967, which was the least busy year since 1960, the weekly workload was five days off and two 6-hour work days.

These findings prompt the question whether there are too many pilots, bearing in mind that an occasional delay to vessels due to lack of service during exceptional peak periods should be an accepted risk. The number of pilots has a direct effect on the individual pilot's remuneration on account of the pilots' status of *de facto* employees.

It would appear that, under these circumstances, the appointment of the fifth pilot in 1967 was unwarranted after the experience of 1966. In fact, the appointment had been made one year earlier when the apprentice was given a probationary licence, thereby committing the Pilotage Authority to grant him his permanent licence. No doubt at the time the governing factor was the all-time peak which was reached in the two previous years and was expected to continue.

The local scheme of organization may be one reason why the number of pilots remains above realistic requirements. The present system was dictated by factors that no longer exist, i.e., at a time when more pilots were needed, radio communications with ships were lacking and travel by road to and from the pilot vessel base was time consuming. As suggested earlier, the necessity for a pilot station with living accommodation at Point Escuminac should now be reassessed. With the trend to larger ships, the

number of assignments is unlikely to increase significantly and the average use of once or twice a day of the pilot vessel raises the question whether or not the present system of providing this service is economical. It is quite possible that the demand could be met more easily and economically both in cost and pilots time (hence in the number of pilots) by engaging a third party to provide boat service as required, either on a per trip basis or by contract for the season. There is no need for such a third party to be constantly available. E.T.A. requirements should be more adequately established so that the boat operator can be informed of requirements, thus enabling him to be otherwise employed between pilot vessel trips.

(4) LEAVE OF ABSENCE

When calculating the pilots' workload, allowance should be made for absence. If it were taken for granted that the regulations dealing with leave of absence are applied the records indicate that the pilots never take any holidays and are never ill. The By-law provides that any absence shall be without pay. The annual report shows that the pilots all receive exactly the same share while they are on strength, i.e., from the time of their appointment to the date of their retirement. Here again, the factual situation does not conform to the regulations.

The purpose of the standard leave of absence provisions which appear in most By-laws is the establishment of pooling rights for the period of absence when pooling is based upon availability for duty. The provisions become meaningless when, as in this District, any absence is always without pay. The same texts have been reproduced, no doubt for the sake of uniformity with the format of regulations in other Districts, but the expressions "with pay" and "with half pay" have been deleted.

This process has provided some meaningless provisions, such as subsection 23(5) which provides that such leave without pay may be granted for a period not exceeding three months. The provision is silent as to what happens if the illness is of longer duration. To stipulate that part of an absence will be without pay leaves the inference that the rest of the absence should be with full pay; otherwise, there is no point in the restriction.

However, these provisions are not followed. Since forced inactivity in the District during the four-and-a-half winter months does away with the necessity of providing for annual leave, there was no need to provide for it in the By-law. According to long-established practice, pilots arrange among themselves to replace one another in case of absence due to illness or for any other reason, thus equalizing the workload in the long run. For this reason, it has been the practice to disregard justified absence for pooling purposes and, hence, the pilots receive equal shares.

COMMENTS

This is a good example of failure to recognize that District regulations are essentially local legislation whose contents and text are dictated by local requirements. Any attempt toward standardization is bound to result in meaningless, inapplicable legislation, as is the case here.

5. PILOTS' REMUNERATION AND TARIFF

The Miramichi pilots are *de facto* employees whose remuneration is an equal share in the dues earned by all the pilots. The pilot vessel earnings have been for a long time segregated and used for the sole purpose of the maintenance of the pilot vessel service. As explained earlier, although sharing rights are supposed to be based on each pilot's day-to-day availability for duty, justified absence is not taken into account, with the result that all fully licensed pilots received an equal share for the time they were on strength. Therefore, their actual "take home pay" corresponds to what is in other Districts the average "take home pay" per pilot on strength. For the years 1958/59 to 1967, the individual pilot's "take home pay" was as follows:

Year	Amount	Year	Amount
1958/59.....	\$4,471.42	1964.....	\$ 8,628.17
1960.....	4,536.03	1965.....	11,611.22
1961.....	5,734.93	1966.....	6,709.48
1962.....	7,151.11	1967.....	6,854.70
1963.....	6,769.26		

The high remuneration in 1965 is accounted for by three main factors: (a) the largest number of assignments on record (vide p. 433); (b) increased rates; (c) only three pilots had full sharing rights, compared with four the previous year. In the years that followed, earnings were lower due to fewer assignments shared among four and five pilots.

The aggregate pilot earnings quoted in the annual report are inaccurate and misleading on account of the interpretation given locally to the term "pilot", which does not include a probationary pilot. Hence, the half share paid to the probationary pilot is shown as the remuneration of apprentices.

For a number of years the pilots requested that the rates be increased and that a \$25 additional charge be made for transiting the Morrissey bridge. The Pilotage Authority deferred the request because at that time an increase in water transportation costs would have adversely affected the port including pilotage. In 1964, the draught component of the voyage rate was raised from \$2 to \$2.50, and the movage rates were substantially increased to a \$30 flat rate. However, the bridge charge was not granted.

In addition to the rates provided in the tariff, i.e., voyage rates (\$2.50 per foot draught and 3¢ per N.R.T.), movage rates (\$30) and boat charges

(\$10), detention and special charges are also unofficially made. The Secretary testified that detention in excess of one hour was charged at \$5 per hour². This normally occurs in late fall when ice is beginning to form and it is difficult for the pilot vessel to reach ships. When a ship arrives after the pilot vessel has been taken out of the water for the winter, an extra charge of \$50 or \$75 is also made to cover the extra expense involved in refloating it and taking it out again after the ship has departed. These extra costs had been agreed to beforehand by Masters and the Authority. The alternative would have been for the pilot to board and disembark at Charlottetown at the ship's expense which would have been more costly.

COMMENTS

Under the present legislation it is illegal to make any change which is not specifically provided for in the regulations (Part I, p. 150).

The delay incurred in the circumstance described by the Secretary is not detention since it is due to circumstances over which the ship concerned has no control (vide Part II, p. 158).

The two cases mentioned by the Secretary are due to services being performed under abnormal circumstances. Nevertheless, in such cases the tariff must be applied. The solution is for the Pilotage Authority to include in the tariff special provisions to cover such occurrences.

Re voyage rate structure, reference is made to the comments pp. 381-382.

6. FINANCIAL ADMINISTRATION

The Pilotage Authority keeps three distinct funds: the Pilotage Fund in which all monies received by or on behalf of the Authority is kept and whose net balance after all the authorized expenditures have been effected becomes the pilots' pool; the Pilot Fund, called the Annuity Fund; and the pilot vessel service Maintenance Fund.

The Secretary prepares two District annual financial statements one in detail for the Pilotage Authority (Ex. 313) and an abbreviated version (Ex. 311), which appears on the form provided by the Department of Transport for the required annual report.

Up to 1963, the financial statements contained in the annual reports gave an exact account including some details of the Pilotage Fund and items of expenditure showing the amounts that were paid to the Annuity Fund and to the Boat Fund. In 1964, the By-law was amended to approve the creation of a separate fund out of that part of the fund that would normally have been paid into the Pilotage Fund, i.e., pilot boat charges. From 1964

²A 1969 amendment to the By-law introduced a detention charge of \$3.30 after the first hour to a maximum of \$25.00 per calendar day for detention on board a vessel for any reason during the winter season (Nov. 1 to April 30), or for detention at the boarding station after a ship's ETA (P.C. 1969-490 dated March 11, 1969).

on, pilot vessel receipts and payments to the Maintenance Fund (formerly known as the Boat Fund) have been omitted with the result that the financial information contained in the annual statements no longer conveys a true financial picture of District operations. This situation should be corrected.

The last payment made out of the Pilotage Fund to the Annuity Fund dates from 1949 when the amount was 10 per cent of the pilots' earnings. Since then, the interest yield of that fund has been sufficient to meet the payment of the annual premiums payable on the annuity contract for each of the pilots and, therefore, there has been no contribution by the pilots towards their pensions since then.

The Commission has obtained the missing information regarding pilot vessel earnings for the year 1967 in order to make the following comparative statement of the years 1961 and 1967.

	1961	1967
REVENUES		
<i>Pilotage Dues</i>		
Pilots' earnings.....	\$25,727.08	\$38,711.70
Pilot vessel earnings.....	2,720.00	2,250.00
	\$28,447.08	\$40,961.70
Undistributed balance from previous year.....	213.14	213.14
Total assets.....	28,660.22	41,174.84
DISBURSEMENTS		
Secretary's remuneration...	1,422.35	2,048.09
Pilot Master's remuneration.....	350.00	600.00
Pilot house expense.....	348.39	508.84
Provisions.....	381.33	592.60
Office supplies, postage, telephone, etc.....	51.29	73.57
Pilot vessel service		
Boat Fund (less Secretary-Treasury Remuneration).....	2,584.00	2,137.50
Boat Hire.....	25.00	25.00
	2,609.00	2,162.50
Pilots' travelling expenses..	345.00	742.40
Pension Fund.....	nil	nil
Canada Pension Plan.....	nil	396.00
Pilots' take home pay.....	22,939.72	33,837.68
Apprentice's (probationary pilot's) remuneration.....	nil	nil
Balance on hand on Dec. 31st.....	213.14	213.16
	\$28,660.22	41,174.84

As of December 31, 1961, the Boat Fund (now the Maintenance Fund) amounted to \$3,902.16 a \$414 increase over the year before. The earnings of this fund are the aggregate boat charges less the 5% commission to the Secretary, bank interest on the accumulated capital and a small amount received for fire insurance in 1961. The 1961 disbursement for operating the pilot vessel amounted to \$2,385.33, the main items being the boat operator's (i.e., the apprentice pilot's) remuneration (\$1,030.50), the remuneration for "Captain and Caretaker" (\$150 per year), repairs, fitting out and gas and oil.

The function of Master Pilot (and therefore his entitlement to a special remuneration) is not covered in the By-law. The Secretary testified that it has been a custom before his time (i.e., 1940) to pay the Master Pilot an annual additional remuneration fixed by the Authority of which the other pilots were aware, a custom that has continued up to the present time.

The items *Pilot house expense* and *Provisions* are expenses incurred in maintaining the pilot station at Escuminac, e.g., electricity, taxes, repairs and food for the pilots and apprentices at the station.

What appears in the annual report as money paid to the apprentices is, in fact, what was paid to the probationary pilots, i.e., one half a share in the pool from the time they receive their probationary licence until they obtain their permanent one. The \$4.50 per day an apprentice receives for looking after the pilot vessel is paid out of the pilot vessel Maintenance Fund and, therefore, does not appear in the Pilotage Fund statement, or in the annual report to D.O.T.

This District has retained the practice contemplated in the provision now contained in sec. 344 (1) C.S.A. which has become obsolete since the time the billing procedure was adopted (Part I, pp. 196 and ff). The Secretary testified that before the departure of each ship he sends a waiver to the collector of Customs so that the ship may obtain its clearance (Ex. 317), despite the fact that in most cases the dues have not been paid since it is also the local practice to bill the agent after the ship's departure.

7. PENSION FUND

The only pension scheme the Miramichi pilots have entered into was introduced in 1937 (vide p. 428). It is still in force and its details have not changed. It is basically an annuity purchasing plan which assures the pilots a \$500 annuity on reaching the age of 65.

When a pilot is licensed a \$500 annuity is purchased by the Pilotage Authority on his behalf from the Annuity Branch in Ottawa and the annual premiums are paid out of a fund called the Annuity Fund which the Pilotage Authority keeps for that purpose. This fund comprises compulsory deductions made from time to time from pilotage earnings in amounts

determined by the Pilotage Authority after consultation with the pilots, plus returns from investments. The first charge on the fund is the aggregate premiums paid annually to the Superintendent of Annuities in Ottawa in favour of each pilot. The unspent balance is invested. The last compulsory contribution (amounting to 10 per cent of the gross pilotage revenue) was made in 1949. Since that time, the fund has been self-sustaining, which accounts for the nil entry in the financial reports since 1950.

Apart from this annuity scheme and the Canada Pension Plan to which the pilots are now required to contribute, they have no welfare plan or pension and they do not benefit from the Workmen's Compensation Act or Unemployment Insurance. However, as stated earlier, through their work sharing and pooling arrangements, they have provided protection for themselves against loss of earnings due to injury and illness. Nevertheless, it would be preferable if these arrangements were guaranteed by regulations.

Subsection V

THE FORMER PILOTAGE DISTRICT OF
RICHIBUCTO, N.B.

LEGISLATION AND GENERAL DESCRIPTION

The Pilotage District of Richibucto was rescinded October 29, 1968, by Order in Council P.C. 1968-2027 (Ex. 1514(m)). Its Pilotage Authority had not been functioning as such for a number of years and, on account of the gradually decreasing importance of the port, it became obvious that cancellation of the District was indicated rather than a reorganization of its Authority.

The District was created April 21, 1875, by Order in Council P.C. 374 (Ex. 1514(a)). Its latest By-law, which dated from 1962, was similar in form and content to the By-laws of other Commission Districts. However, its provisions conformed neither with reality nor local requirements, e.g., pilotage operations were supposed to be fully controlled by the Secretary who despatched by a tour de rôle and pooled earnings but, in reality, for a number of years before and after the By-law was made there was only one pilot who acted as a free entrepreneur without assistance from the Pilotage Authority or its Secretary.

Richibucto is a public harbour situated on the river of the same name some four miles upstream. It probably thrived in its early days but, because of the limited needs of the region and the fact that the harbour's mouth is almost blocked by shifting sand bars, the port gradually became inaccessible as ocean vessels increased in size. No doubt the very limited economic importance of the port could not justify the considerable cost of the capital and maintenance dredging that would be required to achieve and maintain adequate depth in the channel. Hence, for all practical purposes, this port is now barred not only to normal ocean-going traffic but also to large coastal vessels.

The maximum draught for vessels is 15½ feet. Richibucto is described as a sand harbour whose channel is liable to be materially altered by every storm. While the channel is well marked with aids to navigation, it has to be constantly surveyed and aids, including range lights, have to be changed from time to time. For that reason, chart depths and channel locations indicated are not reliable. Because depths change so quickly, the pilots have been in the habit of taking soundings every time a ship is brought into the harbour. In 1963, the pilots reported that the largest ship that berthed at Richibucto was the S.S. *Eskglen* of 4,222 NRT, 447 feet in length, and the deepest draught leaving the port was 17 feet with a favourable tide. Due to the draught limitation, large vessels, generally loading pulpwood, can not take on a full cargo and this factor has also adversely affected this District. The season of navigation is roughly from May 1 to November 15.

The following table, compiled from D.B.S. statistics showing arrivals of ships of 250 NRT and over, indicates the decline in traffic and the port's ineffectiveness.

Year	Number of Arrivals	Average NRT	Cargo Handled (tons)	
			Foreign	Coastwise
1959.....	16	1,782.4	11,465	32,345
1960.....	20	1,788.9	15,994	36,382
1961.....	21	1,882.6	27,065	13,930
1962.....	27	1,588.9	41,463	11,357
1963.....	15	1,752.0	20,055	6,317
1964.....	25	1,701.9	38,473	10,348
1965.....	11	1,657.5	19,852	6,155
1966.....	5	1,341.6	7,309	3,508
1967.....	—	—	—	366

SOURCE: EXHIBIT 1483

The Pilotage Authority was a commission of three members recruited locally. Since there was almost no pilotage activity, there was almost nothing for the Pilotage Authority and its Secretary to do, with the result that for a number of years the District had ceased to function. One of the Commission's members stated in 1963 that there had not been any meeting of the Pilot Commissioners for the previous twelve to fourteen years. There was not even a meeting to adopt the 1962 General By-law which had been drafted by officials of the Department of Transport at their instigation and forwarded to the Authority for concurrence.

Mr. Leo Leblanc, who was appointed Secretary and Treasurer November 5, 1959 (Order in Council P.C. 1959-1440, Ex. 1514(i)), refused the office. When he appeared before the Commission at the public hearing, he stated that he had nothing to say because he knew nothing of the situation since, in fact, he was not the Secretary. He added that his appointment had been handed to him against his will and that he had been unable to get books and documents from the former Secretary. He considered his appointment a political one which he did not wish to keep because it created enemies.

Capt. F. S. Slocombe testified that appointments such as these were made in the Minister's office and that the Department does not verify whether a person who is being appointed has been informed and accepts. It was assumed that Mr. Leblanc had been told of the appointment by his local member of Parliament or whoever recommended him.

Since 1963, the District has not submitted the required annual reports, despite repeated demands addressed to the Secretary and members of the Authority (Ex. 1514(k)).

The maximum number of pilots since 1926 has been three and Mr. Edgar O'Leary has been the sole pilot since 1958. He served as an apprentice-pilot for ten years during which he made ten to fifteen trips a year with the pilots and also operated the pilot vessel. He holds no marine certificate of competency. All his working life he has been a fisherman or a seaman. He served in the Royal Canadian Navy as a seaman for five years and also in vessels on the Great Lakes as an able seaman and wheelsman. He was licensed as a pilot on the recommendation of the then senior pilot.

He stated that the limited demand for pilotage service did not warrant the appointment of another pilot, pointing out that if he became temporarily unavailable there was a former pilot who could replace him. He testified that he had never had an accident, and only occasional groundings with no damage to the ships concerned.

Pilot vessel service was provided by a local resident who was hired by the pilot at \$25 per trip plus an additional \$20 for attending to the ship's lines for which the pilot was not reimbursed.

Pilot O'Leary was acting as a private and independent entrepreneur. He made all his own arrangements, collected the dues he earned and retained them all. He kept no record and made no return to the Authority.

He billed ships according to the rates established in the tariff, except for the boat charge which he made only once per round trip. The rates were \$2.00 per foot draught and 2¢ per NRT.

COMMENTS

The appointment of a pilot is not warranted. The navigational difficulties encountered require no more than up-to-date knowledge of the channel. Such information may readily be provided by a "Pilotage Adviser" (General Recommendation 12, p. 493). The only likely casualty, as indicated by the records, might be grounding, and in such a case the ship involved is not likely to sustain serious damage on account of the nature of the sea bottom.

Subsection VI

PILOTAGE DISTRICT OF BUCTOUCHE, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The only legislation with particular application to the Pilotage District of Buctouche (except for appointments) is contained in two regulations: the 1877 Governor General's Order creating the District and the 1961 Pilotage Authority's Regulation, i.e., the present General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

On April 28, 1877, by Order in Council P.C. 347 (Ex. 1515(a)) the Governor General created the Pilotage District of Buctouche, fixed its limits, appointed a five-member commission of local residents as its Pilotage Authority and decreed that the payment of pilotage dues was to be compulsory. Except for the names of the incumbents, this Order in Council has not been amended since.

The limits of the District are described as extending:

"North to Richibucto Head, and South to Cocagne Head, and to comprehend the waters between New Brunswick and Prince Edward Island or adjacent thereto".

The Pilotage Authority is now a three-member commission assisted by a Secretary.

(2) DISTRICT REGULATIONS

All the regulations made by the Pilotage Authority that are in force are contained in the District General By-law which was sanctioned by Order in Council P.C. 1961-193 on February 9, 1961 (Ex. 19) which has not been amended since. Except for a few points, it is a verbatim reproduction of the Miramichi By-law. The main differences are:

- (a) There are no provisions modifying or amplifying the exemptions defined in sec. 346 C.S.A. and, hence, small ships irrespective of their size are subject to the compulsory payment of dues if not of dominion registry.
- (b) The duration of apprenticeship is three years.

- (c) All candidates, whether apprentices or mariners in case apprentices can not be recruited, must hold a marine certificate of competency not lower than "Master of a Home Trade Tug".
- (d) The movage rates are the same as for voyage rates, i.e., \$2 per foot draught plus 2¢ per ton; the pilot boat fee is \$5.

As will be seen later, these regulations are completely disregarded in practice.

2. HISTORY OF PILOTAGE

Prior to Confederation, the waters of the present District came under the jurisdiction of the Kent County Sessions under the same legislation as the other New Brunswick ports (pp. 34 and ff.).

As stated earlier, the District was created under federal legislation on April 28, 1877, by P.C. 347 (Ex. 1515(a)) which, except for appointments, has remained unchanged to date.

The first By-law was approved July 20, 1877 (P.C. 694, Ex. 1515(b)). It contained practically the same provisions as the contemporaneous By-laws of adjacent Districts. It was based on free enterprise and each pilot had to be the owner or part owner of a pilot vessel. The rates for a pilotage voyage were computed on a price unit per foot draught which varied according to a scale based on net tonnage only. Masters of ships outward bound were at liberty to choose their own pilots.

For a time between 1917 and 1935, the Pilotage Authority must have been inactive since it was necessary to appoint a full new board of Pilot Commissioners in 1935 (P.C. 1305 dated May 18, 1935 Ex. 1515(c)) when it was realized that the previous board had ceased to exist because two of the members had died and the third had left the locality and his address was unknown.

Shortly afterwards, the new Authority enacted new By-laws (approved on June 26, 1935, by Order in Council P.C. 1669 Ex. 1515(d)), establishing fully controlled pilotage and providing for the pooling of the pilots' earnings and their direction by a Pilot Master. The rates were amended by the addition to the price per foot draught of a price per ton (\$1.50 per foot draught plus 1¢ per NRT). The movage rate structure was retained. Direction of the pilot vessel service was taken over by the Pilotage Authority and the pilots were required as a group to maintain one or more vessels at the expense of the District. The boarding station, which is still in use, was established "two-thirds of a mile Southeast of the lighthouse on Buc-touche Sandbar and on the line of Dixon Point range lights". Apprenticeship was abolished. Anyone could apply to become a pilot provided he was a resident of the County, was not less than 21 years of age, had passed an examination on local conditions and was physically and mentally fit. No marine certificate of competency was required nor any actual experience

in District waters. There were neither probationary nor permanent licences: only a term licence which was renewed every two years until the ultimate age limit of 70 was reached.

This By-law was amended twice until superseded in 1961 by the General By-law presently in force. In 1937, P.C. 2467 dated October 6, 1937 (Ex. 1515(e)) dealt, *inter alia*, with special cases by providing a special rate of \$5 per trip for steamships engaged in the carriage of sand and gravel and the S.S. *Elkhound*, which regularly were exempted but employed a licensed pilot. In 1955, P.C. 1955-100 dated January 20, 1955 (Ex. 1515(i)) raised the voyage rates to \$2 per foot draught plus 2¢ per NRT, and introduced a boat charge of \$5.

Chapter B

BRIEFS

No brief was presented.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

According to the definition of its limits, the District comprises all the waters of the bays, coves and rivers along 27 miles of the New Brunswick coastline from Richibucto Head to Cocagne Head as well as all that part of Northumberland Strait as far as the coast of Prince Edward Island situated opposite that part of the New Brunswick coast above described. According to the present governing statutory provisions (secs. 345 and 357 C.S.A.), this would mean that any ship in transit through Northumberland Strait, or heading to or coming from a Prince Edward Island port situated along these waters, would be subject to the compulsory payment of dues unless exempted by law.

These limits do not correspond to present reality and must be interpreted in their 1877 context.

In sailing ship days, a wide area of open water was necessary to serve as a boarding area, and compulsory payment in the 1873 Pilotage Act (sec. 57) did not extend to ship movements through District waters other than inward and outward voyages, i.e., to and from a District port. Vessels not calling at a District port could not be subjected to the compulsory payment of dues, even if they happened to pass through the waters of one or more Pilotage Districts.

The only pilotage that exists along that 27 miles of coast occurs at the port of Buctouche and extends no farther seaward than the boarding area as described in the 1935 District By-law, i.e., the open waters southeast of the lighthouse on Buctouche Sandbar and in line with Dixon Point range lights 25 miles inside the official eastward limit of the District which is the coast of Prince Edward Island. The limits of the Buctouche pilotage area should be amended officially to correspond to the port of Buctouche and its immediate approaches.

(2) PHYSICAL FEATURES

The harbour of Buctouche is formed by the common estuary of Black River, Buctouche River and little Buctouche River. It is protected to seaward by a seven-mile sandbar parallel to the coast which provides shelter. The town of Buctouche, where the wharves are situated, is about one mile upstream on Buctouche River and six miles from the boarding area.

This estuary, which is called the harbour, extends over a large area all but covered with mud flats under only a few feet of water through which winds a shallow, narrow dredged channel, maintained at a width of 80 feet and with a controlling depth of 13 feet at low water. There is heavy silting and almost constant maintenance dredging is required to keep even that shallow depth. Pilots take soundings regularly and buoys and leading lights are changed to indicate the deepest water. Rock bottom is found at two places along the channel at depths of 14 and 15 feet. Major improvements to the channel and the ensuing maintenance requirements would call for extensive expenditures which can not be justified by the economic importance of the port. This port is, and will remain, out of reach to all maritime traffic except small vessels and up-to-date knowledge of the changing conditions of the channel is a requisite to safe navigation. The only type of casualty which is likely to occur is grounding on the mud banks of the channels or in the channel where depth has been reduced by silting with no other consequence except the inconvenience of delay. Any Master could navigate this channel provided he possesses up-to-date local knowledge or has the assistance of a "Pilotage Adviser".

On account of the shallow channel, both inward arrivals and outward departures are generally timed for high water. There are no tugboats available and either the pilot or the Master takes charge of berthing.

Navigation extends from May 1 to November 15 approximately because the river freezes during the winter.

There is no night navigation since light-buoys are not maintained.

The channel is marked by a system of cans, conical buoys and spar-buoys with bushes indicating turning points. Two sets of range lights mark the centre of the only two straight courses in the channel, which extend some three miles from the seaward entrance of the channel. The first set, located on Dixon Point, is one of the reference points to locate the seaward boarding area (p. 455). The pilots complained that the second range light on Indian Point was very poor. This has now been corrected, the range lights having been converted to automatic and their intensity increased.

Fog is not prevalent but when it occurs ships are not navigated.

The port serves only local needs, i.e., imports of general merchandise and oil products, and local exports mostly of wood products.

(3) MARITIME TRAFFIC

The following table provides a comparison between D.B.S. figures for ships of 250 NRT and over and statistics contained in pilotage returns.

Year	D.B.S. Statistics (Ships over 250 NRT)				Pilotage Returns (Ships over 250 NRT)		
	No. of Arrivals	Average NRT	Cargo handled (Tons)		No. of Pilots	No. of Ships	Average NRT
			Foreign	Coastwise			
1960.....	16	1,987.6	1,742	41,703	3	21	1,803.29
1961.....	18	1,286.5	4,000	30,450	3	17	1,346.41
1962.....	18	891.9	10,100	14,681	3	14	888.00
1963.....	8	1,455.8	nil	11,955	3	12	1,199.42
1964.....	8	1,294.1	3,626	7,335	3	17	850.59
1965.....	9	1,401.0	4,001	6,232	3	13	1,156.08
1966.....	11	1,251.3	7,561	6,454	3	15	1,089.87
1967.....	11	1,048.6	nil	9,908	3	13	1,395.08

Of the 13 ships which took pilots in 1967, six were Irving Oil tankers, and most of the others were ships carrying pulp wood.

The foregoing table supports the findings already arrived at by studying the physical features of the harbour. Only small ships can have access to the port. Ships, even small ones under 250 tons, will not venture in unless they are navigated by a person with local knowledge but the difficulties encountered are not such that regular traders need a pilot. There is not enough work to keep one pilot fully occupied and when it is divided among three pilots their individual workload is very light. In view of the trend to larger ships and the availability of alternate means of transportation, it is unlikely that traffic will ever increase substantially.

2. PILOTAGE ORGANIZATION

The situation is similar to the one that prevailed at Richibucto before the District was abolished, except that the Secretary-Treasurer does attend to his duties. Since there are no commission meetings, a minute book is not kept and the only records are copies of the District annual reports.

The Secretary testified that, in general, the District By-law is not followed because it is difficult to convey its meaning to those concerned. Furthermore, since Buctouche is not a large port, no serious difficulties are encountered.

The main function of the Secretary is to collect pilotage dues, administer the Pilotage Fund and prepare and file the annual reports. While the By-law states that his salary is 5% of the gross earnings, the former practice was for him to retain \$4 per ship with the exception of tankers for which he received \$3. However, since 1963 the By-law provision has been followed.

3. PILOTS

(1) RECRUITING AND QUALIFICATIONS OF PILOTS

The number of pilots had generally been three since 1932. It was reduced to two in 1968 by the retirement of Pilot Willie Duplessis who had reached 70 years of age. He has not been replaced (Ex. 1515(m)).

The pilots are employed as fishermen when they are not piloting. They hold no certificate of competency but this was not a prerequisite when they were licensed. The licensing procedure has always been very informal.

Pilot M. Mooney stated in his evidence that he had learned from his father who was a pilot. He received his licence in 1931 after being examined by another pilot. Pilot Willie Duplessis also sailed with his father and his licence was issued in 1933 by the then Chairman of the local Commission on the recommendation of the Secretary. His son, Vincent Duplessis, was granted his licence in 1955; he wanted to take his father's place on the latter's retirement. The Secretary testified that he did not know whether Vincent Duplessis had served any apprenticeship or if he had been examined on his qualifications.

(2) SHIPPING CASUALTIES

There have been no serious casualties. Occasional groundings have occurred but, since the bottom consists of sand and mud, no damage was sustained. Occasionally, the wharf is slightly damaged when berthing. Once the Irving Oil pier was extensively damaged when a ship collided with it. The pilot was not to blame because the Master had insisted on berthing his own ship. The Pilotage Authority keeps no record of these accidents nor has the Department of Transport any record.

4. PILOTAGE OPERATIONS

Ships always send their estimated time of arrival, either to the Secretary or to their agent, generally by wire through Charlottetown, P.E.I. (VCA). The Secretary or the agent notifies the pilots. The pilots work on turns. It takes from three-quarters of an hour to an hour to pilot a vessel in but it takes a little longer outward for vessels deeply laden.

Realistically, a regular pilot vessel service is not maintained. When such service is needed, it is obtained on a per trip basis through boat hire, except in the case of Pilot Mooney who uses his own fishing vessel. These vessels are not licensed by the Authority. When a pilot is on board, they display the pilot signal.

The boats used for the pilot vessel service are based in Caraquet where the pilots join them and they travel the six miles to the boarding area to meet ships.

The total workload could easily be attended by one pilot. In 1967, the average total workload during the six and a half months' navigation season was two ships per month (4 trips). A second pilot is desirable to provide uninterrupted service if the first pilot becomes unavailable for any reason. This can be achieved as at present by sharing the workload between the pilots or by having the second pilot act only in relief, provided he obtains sufficient practice to maintain his experience either through pilotage assignments or through navigation in the District when otherwise employed.

5. PILOTS' REMUNERATION AND TARIFF

The tariff is unsatisfactory in that the same rates apply to trips and movages. It is possible that the problem is only theoretical because apparently a movage is never performed. This information is not shown in the annual reports as it should be and the spaces for details of assignments are left blank. However, since there is always a possibility that a movage may be necessary, the tariff should be amended to fix reasonable rates for the various types of movage that may be performed in the District.

As stated in other Subsections when discussing the tariff structure, there is no reason why the draught factor should be retained.

The practice regarding boat charges is to bill each ship \$20 for pilot vessel service covering inward and outward service, instead of \$5 each time a pilot vessel is used. No doubt such a charge is more in line with the price the pilots have to pay to the boat owners and to date the charge has been paid without any objection, but it is obviously illegal and also results in a statutory offence (sec. 372 C.S.A.). Therefore, this practice should be discontinued. If it is considered that the present rate is inadequate, the situation should be corrected by an amendment to the tariff but, until this is done, the Secretary must charge only what is prescribed.

Pilot Mooney stated in his evidence that Masters frequently ask the pilots to reimburse part of the pilotage dues but the pilots always refuse, or it is suggested that a higher pilotage fee be charged, the surplus being paid to the Master. The Secretary testified that he had also heard rumors of kick-backs but he had no proof.

The pooling procedure stipulated in the By-law is not adhered to. No doubt because few ships call during any month, the practice has been to share the earnings every time a bill is paid. The Secretary deducts his share and the rest is divided equally among, and paid to, the pilots (even if a pilot happened to miss a turn). However, this can not be the full story because, if such a procedure were followed, the three pilots would have received the same amount every year. The record shows this is not the case and there are always discrepancies, e.g., in 1967, the annual gross earnings of the three pilots were shown as \$872.60, \$694.10 and \$704.10.

6. FINANCIAL ADMINISTRATION

The District financial report contains very little financial information—no item of expenditure is included except what is shown as paid to the pilots. Up to 1966 inclusive, this amount corresponded exactly with total earnings, i.e., the amount shown as paid to the pilots prior to deducting the Secretary's remuneration. In the 1967 report, the discrepancy between the two totals indicates (although no details are given) that the new Secretary deducted his 5% remuneration (\$116.06) and also charged other expenses, no doubt for stamps, stationery and the like (\$3.78).

The amount quoted as each pilot's remuneration is not his net income because it is a share of the total revenue, including boat charges, out of which he had to pay boat hire.

There have never been any funds—pilot, welfare, pension or relief—in this District. The pilots do not benefit from Workmen's Compensation or Unemployment Insurance, nor do they enjoy any group protection of any kind. Their contributions to the Canada Pension Plan are not deducted by the Secretary. Directives received from the Department of Transport were to the effect that "pilots are considered to be self-employed and are thus responsible for their total contributions to the Canada Pension Plan" (vide Part I, p. 81).

Subsection VII

PILOTAGE DISTRICT OF SHEDIAC, N.B.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

All the local legislation concerning this District, except appointments, is contained in three Orders in Council, of which two concern the formation of the District and the third is the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The authority for the existence of the District is P.C. 486 of May 19, 1876 (Ex. 1516 (a)) which established the District, fixed its limits, appointed a five-member Commission to be its Pilotage Authority and made the payment of dues compulsory. Except for the names of the Commissioners and the District limits, this Order in Council is still in force.

The present limits of the District were redefined a few days later (P.C. 537 dated June 1, 1876 Ex. 1516(b)) as follows:

“...so as to extend from the Point known as Shediac Point Southerly to Cape Bald, comprehending the waters lying Westerly of a straight line between those Points.”

(2) PILOTAGE AUTHORITY'S ENACTMENTS

The only regulation now in force emanating from the Pilotage Authority is the District General By-law which was approved by P.C. 1961-1068 on July 24, 1961 (Ex. 18).

It is of the same form, style, and content as those of the adjacent Commission Districts. It provides for fully controlled pilotage under the direction of the Secretary whose remuneration is 5 per cent of the gross receipts of the District with a minimum of \$10 per vessel. There is no Pilot Master. The statutory exemptions have been neither modified nor amplified. There is no apprenticeship. Pilot candidates need not have any marine certificate of competency, nor any sea or local experience. Absence from duty always forfeits participation in sharing the pool. The rate structure is similar with charges for inward and outward voyages at \$1.70 per foot draught plus 3¢ per NRT surcharge for power-driven vessels. Pilot boat and moorage charges are both \$10.

2. HISTORY OF LEGISLATION

Prior to Confederation, pilotage in the port of Shediac came under the licensing jurisdiction of the courts for the County of Westmoreland. A federal District was created by P.C. 486 on May 19, 1876 (Ex. 1516(a)) which also appointed as pilotage Authority a five-member Commission recruited locally, made the payment of pilotage dues compulsory and established the limits as extending from Cassies Cape to Point Brûlé. This description was no doubt a mistake since it was corrected shortly afterwards by P.C. 537 of June 1, 1876 (Ex. 1516(b)) which redefined the limits to extend from Shediac Point southerly to Cape Bald, a distance of about 10 miles from headland to handland across Shediac Bay. These limits are still in force.

The rules and regulations made for the government of pilots by the Justices of the County Sessions were followed by four successive sets of By-laws in 1879, 1900, 1943 and 1961 (the present General By-law).

The 1879 By-law (sanctioned by Order in Council P.C. 686, dated May 17, 1879 (Ex. 1516(c))) contained the normal provisions regulating the pilots' profession under the free enterprise system, i.e., rules for licensing, rate-fixing and competition. There was no apprenticeship. Voyage rates were based on draught but inward voyages called for a higher rate. On outward voyages the Master could choose his pilot. Pilots collected and kept the dues they earned and their only obligation to the Authority was to report. The Authority's funds consisted only of licence fees and fines.

This By-law was superseded by new rules and regulations sanctioned by P.C. 1672 dated July 20, 1900 (Ex. 1516(d)). The main change was an increase in rates to equalize them with those prevailing in the neighbouring ports of Cocagne, Buctouche and Richibucto; it increased the moveage (removal) rate; the collection of dues was made the responsibility of the Secretary and his remuneration was fixed at 2 per cent of the gross receipts and earnings of the pilots; the pilot was entitled to dues he earned less his share of District expenses.

The 1943 By-law was sanctioned by Order in Council P.C. 7626 dated October 1, 1943 (Ex. 1516(f)). It established control over the provision of services by arranging for the establishment of a common pilot vessel service and obliging the pilots to share both workload and receipts through a system of despatching and pooling. This By-law remained in force until it was superseded in 1961 by the current General By-law.

Chapter B

BRIEFS

No brief was presented.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION, MARITIME AND PILOTAGE TRAFFIC

The District is wholly contained within the confines of Shediac Bay; it is ten miles wide at the seaward limit and extends seven miles to Shediac. Most of the bay is covered by mud, sand flats and shallows and provides only a narrow channel with a limiting depth as shallow as 5 feet at Shediac. The only accessible port for medium draught vessels is Pointe du Chêne situated one mile seaward from Shediac. It is approached through a well marked channel one cable wide and two miles long which is negotiated by two straight courses clearly indicated by range lights and buoys. The minimum depth in the channel is 14 feet. High tides range between 3½ and 2 feet. The maximum depth at the wharf at low water is 18 feet. The channel entrance, which is marked by a fairway buoy, can be approached from two directions, both well indicated by range lights. Since 1963, all range lights have been converted to automatic and their intensity has been increased. The port is icebound in winter months.

The following table, compiled from D.B.S. statistics (Ex. 1516(i)) of ships of 250 NRT and over, and from statistics contained in the Pilotage Authority's annual reports (Ex. 35), indicates the extent of maritime and pilotage traffic and the pilots' workload (a trip normally means two assignments).

Year	D.B.S. Statistics (Ships over 250 NRT)		Pilotage Returns (Ships over 250 NRT)		
	No. of Arrivals	Average NRT	No. of Pilots	No. of Ships	Average NRT
1960.....	(data not available)		3	16	1,366.7
1961.....			3	30	1,330.7
1962.....			3	22	1,602.0
1963.....			3	23	1,663.9
1964.....	18	1,524.2	3	20	1,720.7
1965.....	16	1,223.2	3	18	1,580.1
1966.....	5	1,329.6	3	10	1,685.4
1967.....	10	1,480.8	3	13	1,418.8

This table indicates that the District is now beyond the reach of modern maritime traffic and even a moderate sized vessel would be unable to call at Pointe du Chêne with a full cargo, or depart with one. The Norwegian M. V. *Belbetty* of 2,990 NRT, which berthed at Pointe du Chêne in 1964, was the largest vessel to enter the port up to that time (Ex. 36).

Coastwise traffic predominates and the port serves only local needs. Its main exports consist of pulpwood and other wood products, and fish products, but a downward trend has been noticeable in recent years.

The pilots recommended that the channel be made deeper or, at least, that maintenance dredging be carried out to preserve normal depth, particularly at the Robin Hood Flour Mills wharf. Here again the governing factors are economics and public interest.

The channel, which extends for about two miles from the pilot boarding area off the fairway buoy to the wharf at Pointe du Chêne, presents no navigational hazards other than those created by strong northeasterly winds and some silting.

2. PILOTAGE ORGANIZATION

Immediately following World War II, there was very little traffic—one ship in 1946 and two in 1947 for four pilots—and the pilotage organization ceased to function although limited pilotage activities continued. The secretary failed to file annual returns in 1948 and also from 1950 up to 1959. Repeated requests from the Superintendent of Pilotage in Ottawa addressed to the Secretary and to the Pilot Commissioners remained unanswered with the result that the Minister of Transport concluded the local Commission no longer existed. However, no action was taken and it was not until a local resident who wanted to become a pilot discovered there was no one to grant him a licence and asked his Member of Parliament to raise the question with the Department of Transport. This brought the desired result. P.C. 1959-878 dated July 9, 1959, appointed three new Pilot Commissioners, one of whom, Mr. J. C. Cunningham, was designated to act also as Secretary and Treasurer. He still held the position in 1968. The Department was also active in re-organizing the District. Departmental officers visited the District in order to explain their duties and responsibilities to the Pilotage Authority and the Secretary (Ex. 1147). Since then, the District has been functioning normally and annual reports have been submitted regularly (Ex. 35).

3. PILOTS

For several years there have been three pilots. They are fishermen by trade and hold no marine certificate of competency.

There appears to be no record or report of a casualty of any kind in recent years.

Requests for a pilot are normally addressed to the Secretary who, in turn, informs the pilots. The three pilots work in turn as convenient to them. They use their own fishing vessel as a pilot vessel. It is licensed annually as such.

A pilotage trip, including berthing, takes about half an hour. Ships deeply laden must wait for high water. Movages are rarely performed and only one was reported in the past eight years.

The light pilotage workload divided among the three pilots averaged less than two trips each per month in 1967. Such a workload could well be attended to by only one pilot but to insure continuity of service it is desirable to license a second pilot who either acts as a relief pilot or shares assignments if this procedure is more convenient.

4. PILOTS' REMUNERATION AND TARIFF

According to the By-law, the pilots' remuneration is supposed to be an equal share in the pool, i.e., of the net earnings of the District. However, the procedure followed is totally different. It appears from the financial data contained in the annual reports that each pilot is actually paid the amount of the dues (including pilot boat charges) his services have earned after deducting the Secretary's remuneration. Furthermore, the pilots have to share among themselves the few operating expenses for stamps, telephone and transportation. On the other hand, as stated earlier, they share the workload as equitably as possible. This system is logical where the workload is so low that pilotage can be only an incidental occupation. In such a case, it is to be expected that other occupations will interfere at times with the pilot's availability and, therefore, will preclude sharing the workload equally. The comparative table below indicates, *inter alia*, the pilots' net earnings in the peak year of 1961 and also in 1967. These figures are not, however, true net earnings because, although they include pilot boat charges, the cost to the pilots of providing their own pilot vessel service is not deducted, and with available data there appears to be no means of ascertaining the amount.

There is no welfare, pension or relief fund of any kind for the pilots.

The tariff provides rates for pilotage voyages, movages and boat charges only. Movages and boat charges are \$10 flat. The rate structure for a pilotage voyage is the same as in most adjacent Districts, i.e., a rate per foot of draught (\$1.70) plus a surcharge per net registered ton (3¢) for power-driven vessels. Reference is invited to the comments on this structure (Restigouche pp. 381 and 382).

5. FINANCIAL ADMINISTRATION

The Secretary attends to the financial administration. He computes pilotage charges from source forms provided by the pilots after each assignment, prepares bills and collects dues. He also prepares the required annual report and forwards it to the Department of Transport. The following table provides a comparison of the financial data contained in the annual reports for 1961 and 1967.

	1961	1967
Earnings		
Pilotage dues.....	\$ 4,087.90	\$ 1,934.65
Pilot vessel licence fees.....	3.00	3.00
Total earnings.....	4,090.90	1,937.65
Disbursements		
Secretary's salary.....	269.65	125.75
Stamps.....	2.25	1.00
Telephone.....	2.20	15.00
Transportation.....	12.37	4.00
Typing.....	nil	2.00
Bank charges.....	nil	9.00
Pilots' remuneration.....	1,124.09	702.92
	1,439.02	492.71
	1,226.32	585.27
	3,789.43	1,780.90
Bank balance.....	15.00	nil
	\$ 4,090.90	\$ 1,937.65

Subsection VIII

PILOTAGE DISTRICT OF PUGWASH, N.S.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

The special legislation that applies to the District of Pugwash is contained in the Order in Council which created the District and in the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The regulation which gives legal existence to the District is the one by which it was created in 1877, i.e., P.C. 90 dated February 2, 1877 (Ex. 1517(a)). Except for appointments and the number of appointees, this Order in Council has not been modified. It provided a three-member (now five-member) Commission for the function of Pilotage Authority, made the payment of pilotage dues compulsory and established the District limits as follows:

“...the said District to be bounded on the East by Cape Cliff, and on the West or North West by Lewis Head, both in the County of Cumberland aforesaid”.

To correct an error (vide p. 476) the limits were redefined as above by the Governor in Council on June 16, 1894 (Orders in Council 1793 and 1812, Exs. 1517(c) and (d)).

(2) PILOTAGE AUTHORITY'S ENACTMENTS

The regulations made by the Pilotage Authority are all contained in the 1962 General By-law (P.C. 1962-898 of June 20, 1962) as amended in 1964 regarding the rates (P.C. 1964-1492 dated Sept. 23, 1964). It is similar in format and content to those of adjacent Districts. It provides for the service to be fully controlled by the Secretary through despatching and pooling the pilots' earnings. Except for age (between 21 and 60) and physical and mental fitness, there are no prerequisites for pilot candidates, but they must pass an examination on required nautical and local knowledge. There is no apprenticeship and no marine certificate of competency or previous experience in District waters is required. The first licence is probationary and

is followed by a permanent licence. The tariff is based on the same structure as in adjoining Districts: pilotage voyages, \$2 per foot draught plus 2¢ per NRT; movages and pilot boat service, \$10 each.

2. HISTORY OF LEGISLATION

Prior to Confederation, public control over pilotage in Nova Scotia existed only at the main ports and each was specifically covered in a special Act of Parliament. In 1851, these special Acts were consolidated into a general statute that applied only to named ports, of which Pugwash was one (vide p. 170).

Organized pilotage in Pugwash began as early as 1833 when a Nova Scotia Act authorized Justices of the Sessions of the Peace for the County of Cumberland to license pilots and make necessary regulations. It also fixed rates and prohibited unqualified persons from piloting. The Act was extended in 1835 to include the harbour of Wallace. It was superseded by another statute in 1848 that applied to Pugwash, Wallace and Pictou. From 1851 on the abovementioned general statute applied.

Pugwash was created a federal Pilotage District in 1877 by P.C. 90 dated February 2, 1877 (Ex. 1517(a)). Three local residents were appointed Pilot Commissioners and formed the Pilotage Authority. The payment of pilotage dues was made compulsory and the limits of the District were defined as quoted earlier.

These limits embodied the two-mile wide bay between Lewis Head and Fishing Point, which is the common estuary of River Philip and Pugwash River, and also some ten miles of coastline further east to Cape Cliff. There was obviously no pilotage along that part of the coast and it was included merely because at that time Government policy was to assign the whole coast to Pilotage Districts.

On June 15, 1877, P.C. 562 (Ex. 1517(b)) sanctioned new by-laws that superseded those made by the Justices of the Sessions of the Peace. They retained most of the provisions of the former by-laws which had been drafted under the pre-Confederation Nova Scotia statute. They provided rules for the exercise of the pilots' profession under free enterprise by providing, *inter alia*, that a pilot who had piloted a ship inward was entitled to pilot her out unless the Pilotage Authority directed otherwise. The pilots were obliged to enforce the quarantine regulations and make reports. Provision was made for the settlement of disputes. The limits beyond which the pilots could not proceed to meet or hail ships were defined: these "pilot limits" extended seaward to the provincial boundary line in Northumberland Strait. The pilots were required to furnish a bond and securities to ensure their compliance with the regulations. The rate structure was the same as for other Nova Scotia Districts

(a carry-over from the pre-Confederation period), i.e., a scale based on tonnage, the outward charges being lower than the inward ones; transiting the drawbridges at Port Philip or at Pugwash called for an additional charge of $2\frac{1}{2}\text{¢}$ per NRT each way.

When in 1889 a consolidation was made of the various orders made by the Governor in Council for the creation of Districts and related matters (P.C. 1261 of June 12, 1889, Ex. 1532) the same error was made as for Halifax (p. 159), i.e., the District limits were cited as being both the District limits as defined in P.C. 90 and the "pilot limits" as defined in the By-law. The error was corrected in 1894 (Orders in Council P.C. 1793 and 1812 Exs. 1517(c) and (d)) by deleting the "pilot limits" from the definition of the District limits and reaffirming the original definition.

In 1938, P.C. 1211 dated May 30, 1938 (Ex. 1517(k)), approved a new set of by-laws which remained in force until superseded in 1962 by the present General By-law.

The 1938 By-law established fully controlled pilotage including despatching and pooling the pilots' earnings. It situated the boarding area one and a quarter miles northeast of Pugwash lighthouse. The rate structure of the adjacent Districts was adopted (\$1.50 per foot draught and 1¢ per NRT). The $2\frac{1}{2}\text{¢}$ per NRT additional charge for proceeding further than one and a half miles above the drawbridges at Pugwash or Port Philip was retained. A boat charge (\$3) was instituted and its proceeds were to be kept segregated for the upkeep, maintenance and repairs of the pilot vessel. The pilot boat charge was raised to \$5 in 1947 and to \$10 in 1962. The movage charge was \$5 plus 50% if over four miles (Ex. 1517(k)).

NOTE

(To read in conjunction with p. 479.)

On May 1, 1969, with the aid of high tide two pilots succeeded in bringing in and berthing at the salt pier the largest vessel ever to enter the port: S.S. *Hallfax*, 5113 NRT, 7470 GRT. Turning the ship before berthing proved to be a difficult and elaborate procedure due to her length, $445\frac{1}{2}$ feet overall, and the confines of the harbour. She left the following day on high tide with over 9,000 tons of bulk salt, thus creating a record as the largest vessel and the largest cargo ever to enter and clear the port.

Chapter B

BRIEFS

No brief was submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The limits of the District as described in the governing legislation (p. 474) do not correspond to realistic requirements. The only pilotage that exists is port pilotage at Pugwash; there is no pilotage along the ten-mile coastline from Pugwash Point to Cape Cliff, nor is there any need for coastal pilotage. Therefore, the District limits should be modified to meet present day requirements and comprise only the approach to the port of Pugwash and its restricted waters.

In practice, Pugwash is the only harbour in the District. Port Philip situated about a mile and a half up River Philip has very little importance, if any, from the pilotage point of view because it is accessible to small vessels only. The entrance to the river is obstructed by a bar of sand and stones and the narrow, tortuous channel has a depth of only five feet. High tides range between eight and six and a half feet.

Pugwash harbour is situated at the head of Pugwash Bay at the entrance to Pugwash River. Increased activity in recent years is mainly due to larger salt exports from local mines. The harbour freezes over during the winter.

The three-mile long channel is indicated by a buoy marking the edge of the reef on the west hand side and by a first set of range lights that guide the first one-mile straight course. A second straight course is also guided by a set of range lights that lead over the bar to the remaining one-mile winding channel, well marked by buoys, and to the main wharves. Except for small vessels, navigation upriver is obstructed by the Palmerstone bridge with 10' vertical clearance (no longer a drawbridge) which crosses the river at Chapel Point, beyond which there is no pilotage.

The minimum depth over the bar is 13 feet, and high tides range between eight and six and a half feet. Depths alongside the piers at low water are 22 and 24 feet.

The Aids to Navigation Branch of the Department of Transport has reported (Ex. 1527) that since 1963 a new set of range lights has been es-

tablished and that six lighted buoys, two of them with radar reflectors, have been placed at the approach to Pugwash. Extensive dredging of the channel (by the Department of Public Works) was proposed.

The following table, drawn from D.B.S. statistics of ships over 250 NRT and the data contained in the Pilotage Authority's annual reports, indicates the extent and importance of the traffic and the pilots' workload (in pilotage statistics, a trip normally means two assignments).

Year	D.B.S. Statistics (Ships over 250 NRT)		Pilotage Reports		
	No. of Ships	Average NRT	No. of Pilots	No. of Ships	Average NRT
1959.....	13	584.5	2		
1960.....	5	1,421.2	2	12	Not available
1961.....	19	1,454.4	2	24	Not available
1962.....	32	1,595.6	2	34	Not available
1963.....	36	1,626.9	2	36	1,636.9
1964.....	41	1,638.7	2	40	1,733.3
1965.....	37	1,305.7	3	37	1,339.4
1966.....	52	1,344.4	3	46	1,469.8
1967.....	43	1,502.6	3	35	1,766.0

Traffic has increased since 1962 mainly on account of increased salt exports. Most ships, even small ones, employ a pilot but some regular traders do not. The effect of the controlling depth at the bar is noticeable by the fact that the average net tonnage of ships remains unchanged. The pilots' individual workload is light.

In 1963, Pilot Brownell testified that the maximum draught of any ship he had piloted out was 21 feet. He added that the largest vessels that had been piloted were two ships in 1962, each about 350 feet long and 2,000 NRT.

Vessels are normally piloted in during the end of a rising tide when the inflowing tidal stream is slight but enough to assist in turning the ship on arrival at the wharf. Ships with shallow draught can be brought in at any time, but those of deeper draught must wait until the tide allows them to pass over the bar.

Since 1962, some pilotage has been conducted at night, mostly for vessels that carry salt, but the majority of ships are piloted during daylight hours. It takes from half an hour to a maximum of one hour to pilot a ship in from the boarding station to the wharf, and vice versa, depending on size and draught and the state of the tide.

2. PILOTAGE ORGANIZATION

The Pilotage Authority is composed of five members. This is too large a number for the few duties to be performed but appears to serve the local political purpose of granting honorific titles.

The five Pilot Commissioners were replaced "en bloc" in 1958 and on December 9, 1963, four of them were dismissed. Each time the break was complete, since the function of Secretary and Treasurer is discharged by one of the Commissioners who in each case was among those dismissed, and there was no continuity from one administration to the next.

At the time of the Commission's hearing in 1963, the Secretary, Mr. D. M. Macaulay, stated that when he took office in 1958 all that he could obtain from his predecessor was a copy of the 1958 annual report and a copy of the By-law. The then Chairman of the Commission, Mr. H. I. Smith, testified that not sufficient stress had been placed on the political angle. He added that since there was a change in the Government he predicted that all the Pilot Commissioners would be replaced and that one of the two pilots would be dismissed, a practice he considered inhibited good administration and operations.

The reason for the dismissal of the Commissioners and Secretary in 1963 was that they were all members of the opposing political party and were active in politics.

The two regular pilots resigned at the beginning of the following season of navigation, leaving the District without a pilot. The reason for the crisis was stated to have been the appointment of the new Secretary (Ex. 1517(q)).

At the time of the Commission's hearing, the two pilots were Pilot Gordon Bollong, licensed in 1936 and Pilot Fred Brownell, licensed in 1956. Neither held a marine certificate of competency; both were local fishermen with knowledge of the District waters. Pilot Brownell had gained his knowledge by accompanying other pilots for two years, after which he was examined as to competency by a Pugwash resident holding a Master's coastal certificate.

Pilot Brownell testified that, since neither could make a living from piloting alone, they were engaged in lobster fishing. In the spring and fall, one piloted while the other fished, but on occasion they were both engaged in piloting. Regardless of the number of pilotage assignments performed by each, they shared their pilotage earnings equally. This is no longer the practice.

Their resignation early in 1964 left the District without pilots. In that emergency, the new Commission sought the assistance of the 75-year old ex-pilot and Pilot Master, Mr. H. Van Ember (referred to in the annual reports as "Captain of Pilots"), to train, assist and direct the two inexperienced persons to whom pilot licences were granted. He also operated

the pilot vessel. Mr. Van Ember acted as such for two years and a half. The number of pilots was increased to three in 1965.

Although the By-law did not provide for apprenticeship up to 1964, there were always one or two apprentices to whom a certain remuneration was paid. Mr. Macaulay stated that the small remuneration paid the apprentices (\$10 per ship) did not prove sufficiently attractive to hold them.

3. PILOTAGE OPERATIONS

The pilots embark and disembark at the entrance to the bay on the west side in the vicinity of the red buoy indicating the edge of deep water. They use their own fishing boats as pilot vessels. These are not licensed by the Authority.

There is no despatching as such and the pilots arrange the distribution of work among themselves. The demand for pilotage is infrequent and could well be attended to by one pilot who, on an average, would have not more than 12 assignments (6 ships) per month. With travelling time added, each trip averages two hours and the total average monthly workload is 24 hours divided among three pilots.

Once again the fact that the demand is so light forces the pilots to be otherwise employed and pilotage becomes a secondary occupation. For this reason there must be sufficient pilots to ensure that one is always available when required.

The rate structure for pilotage voyages is similar to adjacent Districts, i.e., based on draught and net tonnage. In 1964, the charge was increased substantially to \$2 per foot draught and 2¢ per NRT.

The tariff provides for an additional charge of 2.5¢ per NRT for ships proceeding past the drawbridges on the Pugwash River or River Philip. The wording of this provision is archaic since the drawbridges have long since been replaced by fixed bridges. Mr. Macaulay stated that he never had occasion to apply this additional charge because there is no pilotage traffic beyond the bridges.

The By-law provides a \$10 charge for movages. In the last decade, according to the annual reports, the pilots have never been called upon to perform a movage.

Up to 1963 inclusive, the pilots shared their earnings equally. From 1960 to 1963 their "take home pay", after the deduction of the Secretary's 5 per cent remuneration, was shown as \$418.73, \$1,008.00, \$1,949.75 and \$2,157.00. However, this was not entirely net, for the pilots provide their own pilot vessel transportation and follow the custom of paying their own linesman.

This procedure was changed under the new organization following the resignation of the two pilots in 1964. The uneven amount of the earnings of the three pilots indicates that while the work is equitably distributed, each pilot received the dues he earned, less his share of operating expenses. In 1967, the pilots received respectively \$3,113.89, \$2,642.21 and \$2,622.21, making a total of \$8,378.31 out of the total District earnings of \$9,308.08.

4. FINANCIAL ADMINISTRATION

The Secretary is responsible for financial administration, i.e., billing and controlling pilotage dues, settling District operating accounts and paying the pilots their net earnings. He also prepares the required annual report for submission to the Department of Transport.

The various disruptions that have occurred are reflected in the financial administration by such a lack of continuity that financial statements a few years apart are not comparable, e.g., the resignation of the two pilots in 1964 resulted in new items of expense such as the cost of the services of the Captain of Pilots. Even the meagre information contained in the annual reports showed that many changes also occur from year to year, e.g., earnings are no longer pooled and extra charges, not provided for in the By-law, are being made for linesman service. These are collected as pilotage dues as are the charges for the services of small boats used as tugs.

COMMENTS

It appears from the annual reports that the District is operated and administered as if it were a private business and that the governing legislation is totally ignored. This creates a situation which is incompatible with the public function of the Pilotage Authority and which may involve the personal responsibility of the Pilot Commissioners, the Secretary and Treasurer and also the Crown. Such a state of affairs should not be allowed to continue. It is the duty of the District Pilotage Authority to adopt the administrative procedure and enact the rules best suited to meet the requirements of the service by defining them in its regulations. These should be amended from time to time to meet changing requirements, but once they have been made and approved they should be strictly adhered to until they are amended legally.

Such an unsatisfactory legal situation would not have occurred if, on one hand, appointments had not been considered political rewards and the Pilot Commissioners had been chosen for their administrative ability and shipping knowledge, and, on the other, the Department of Transport had effectively discharged its surveillance responsibilities and adopted a positive attitude of guiding and helping the District rather than following a policy of non involvement.

Subsection IX

PILOTAGE DISTRICT OF PICTOU, N.S.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

The special legislation for the District of Pictou is contained in two Orders in Council concerning the formation of the District and the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The legal existence of the District is found in P.C. 225½ dated March 23, 1874, by which the Governor in Council created it, appointed a local Commission to be its Pilotage Authority, defined its limits and decreed the payment of pilotage dues to be compulsory. Except for appointments and the District limits this Order in Council is still in force (Ex. 1518(a)).

By Order in Council P.C. 1891 of July 26, 1913 (Ex. 1518(f)) the District limits were reinstated as they had been first defined in 1874:

“ . . . and that in lieu thereof the limits of the above mentioned District be as follows:

The Pilot Limits for the Port of Pictou shall extend from the most easterly point of Pictou Island, on a line running thence south-east, until it strikes the Gulf shore at Arisaig Pier; and shall be bounded on the west by a line drawn from Amet Island to Rocky Point at the county line; and shall embrace all the navigable waters in the county of Pictou”.

The Order in Council confuses “District limits” with the “pilot limits” for the port, an error frequently made at that time, but it is clear from the text that they are synonymous.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

The current General By-law dates from 1963 (sanctioned by P.C. 1963-214 dated Feb. 8, 1963, Ex. 1518(i)) which superseded the 1940 By-law (Ex. 1518(g)). It makes the regulations of the District uniform with those of adjacent Districts and, in theory, ends the free enterprise

system and changes the status of the pilots to that of *de facto* employees by establishing full control over the provision of services. As in the other Commission Districts those provisions which do not conform to local requirements are ignored.

The General By-law provides for a service controlled by the Secretary. The pilots' earnings are pooled, their remuneration is an equal share of the net revenue of the District and all absences are without pay. The Secretary's salary is fixed at 5% of the gross receipts. There is no apprenticeship. A pilot candidate is not required to hold a marine certificate of competency or to have sea experience of any kind but he must pass an examination before a Board of Examiners on nautical and local knowledge. If successful, he is issued a probationary licence followed by a permanent one, provided his service is satisfactory. The pilotage tariff structure is the same as in adjacent Districts and voyage rates are based on draught and tonnage, i.e., \$2.00 per foot of draught and 2¢ per ton, plus an additional charge of \$1.00 per foot of draught for river piloting. Movages and pilot vessel service charges are fixed at \$10.00 each.

2. HISTORY OF LEGISLATION

Pilotage at Pictou began as early as 1819. In that year a Nova Scotia statute (Chapter 14) empowered the Justices of the Session of the Peace for the County of Pictou to license pilots, fix pilotage dues and make regulations for the government of pilots for the port of Pictou. This Act, as amended, was replaced in 1849 by another Act relating to the harbours of Pugwash, Wallace and Pictou which provided for the appointment of a Commission to licence and regulate pilots in each of these ports. The 1849 Act was superseded in 1851 by a general statute which applied to named ports, including Pictou. By consolidation this Act was the statutory legislation in force at the time of Confederation.

Pictou was established as a Pilotage District March 23, 1874, by P.C. 225½ aforementioned. The first By-law which followed (sanctioned by P.C. 537 of May 11, 1874) retained the organizational features provided by the regulations made by the former authority. This By-law, as amended, was superseded by P.C. 1724 of May 1, 1940 (Ex. 1518(g)) which also retained the same organizational structure and the main features dating back to pre-Confederation legislation. Free enterprise was continued and the pilots could act individually or as a company not exceeding four in number. Each pilot working individually received the dues he earned, less his share of District expenses, but the dues earned by a company, less its share of District expenses, were paid to its members to be divided among them in equal shares, unless they had made other arrangements. The Pilotage Authority kept a Pilot Fund for the benefit of the pilots or their dependents

in need. It was raised by accumulating half the compulsory pilotage dues received from vessels spoken to which refused the services of a pilot. Vessels not spoken to before reaching an imaginary line drawn from Cole's Point to Mackenzie Head were exempt from compulsory payment. Compulsory payment did not apply to river pilotage. A pilot who had piloted a vessel inwards was entitled to pilot her in the river and on her outbound trip, provided there was no complaint from the Master, or the Authority did not order otherwise. The pilots had to furnish an annual bond to guarantee faithful performance of their duty. The rate structure for inward and outward voyages was the same as in Halifax, i.e., a scale based on tonnage, the outward rates being somewhat less than those inward. River pilotage called for an additional charge based on draught (25¢ per foot); the moorage charge was \$4.00; there was no pilot boat charge.

This By-law was superseded by the current By-law which purported to establish fully controlled pilotage. It abandoned the pilots' requirement to post a bond, abolished the Pilot Fund and adopted the rate structure that prevailed in all the small Commission Districts.

The 1874 Order in Council established the District limits as they now exist, i.e., all the navigable waters between the west boundary of the county of Pictou and on the east extending up to Arisaig in the county of Antigonish and extending seaward on the west to Amet Island and in the east to Pictou Island.

In 1908, P.C. 1608 dated July 21, 1908 (Ex. 1518(e)) extended the eastern limit on the Nova Scotia coast from Arisaig to Cape George, i.e., some 70 miles along the Nova Scotia coast, the seaward limit to include all the waters of Northumberland Strait up to that part of the coast of Prince Edward Island which lies between the two headlands of Point Prim and Cape Bear.

This large additional area of open water in which pilot vessels were obliged to cruise to meet inbound traffic soon proved to be too extensive and, hence, detrimental to the efficiency of the service. It also became redundant as power-driven vessels displaced sailing ships for they frequently suffered long delays off the entrance to the harbour awaiting the arrival of a pilot. Therefore, in 1913, P.C. 1891 of July 26 (Ex. 1518(f)) restored the former limits.

Chapter B

BRIEFS

No briefs were submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The governing Order in Council defines the District waters as extending along some 50 miles of the Nova Scotia coast from Rocky Point in Amet Sound to Arisaig. They include a large expanse of open water which extends for more than 10 miles seaward from the edge of deep water at the approach to Pictou harbour. The only pilotage now being performed is at the approaches to, and inside, Pictou harbour and occasionally in the East River flowing into it. Inbound vessels from the west negotiate Caribou Channel without the services of a pilot, and there appears to be no reason why they should not be required to do the same outbound. The pilot boarding area could well be established at the edge of deep water at the harbour entrance.

The present overextended District, which was originally designed for sailing ships, has long since ceased to be necessary. In this modern age of improved aids to navigation the District limits should be redefined to meet modern requirements.

Pilotage in the Pictou District is a combination of port and river pilotage, i.e., port pilotage to and from Pictou Harbour, and river pilotage on the East River up to Trenton and occasionally to New Glasgow.

The harbour of Pictou is situated at the junction of the West, Middle and East Rivers. It is considered one of the best harbours in Northumberland Strait.

The approach to Pictou Harbour presents no navigational difficulties. Pilots board vessels in deep water south of Pictou Island. The controlling depth of the approach channel is 21 feet over the bar to reach the fairway buoy. High tides range between $5\frac{1}{2}$ and $4\frac{1}{2}$ feet. From the fairway buoy to the wharf at Pictou, a distance of about 3 miles, the channel is wide and deep, shows no sign of siltation and is well defined by leading range lights and buoys. The harbour has extensive good anchorage grounds in 40 to 45 feet of water and several wharves with up to 25 feet of water alongside. There is little difficulty berthing ships at Pictou, but at Pictou Landing across the harbour it is most difficult to berth during a strong ebb tide.

The harbour freezes over during the winter and the season of navigation extends from about May 1 to December 1 depending on the severity of the weather.

Causeways that reach from shore to shore now preclude vessels from navigating the Middle and West Rivers. The East River is navigable for small tankers and vessels for 4½ miles to Trenton where pilotage traffic ends. With the aid of a rising tide shallow draught vessels may proceed to New Glasgow 2 miles further upstream. From Pictou Harbour to Trenton, river pilotage is accompanied by the hazards created by changing tides and currents. Only small vessels, mostly tankers of 300 to 400 net tons, go there. The channel is dredged to 12 feet. The deepest wharf is the Irving Oil Company wharf with 9 feet at low tide.

River pilotage is conducted in daylight hours only, whereas pilotage for Pictou and Pictou Landing is conducted on a 24-hour basis but usually during daylight hours.

Pictou is important commercially in the coastal trade and for lumber shipments overseas. Ferguson Industries Limited operate fully equipped ship construction, repair and conversion yards and several vessels arrive and depart in this connection. Trenton is a large steel manufacturing centre. These two ports, as well as Pictou Landing and New Glasgow, are served by railways.

(1) MARITIME AND PILOTAGE TRAFFIC

Vessels plying the District consist of small coastal freighters, small oil tankers, medium-sized ocean-going freighters and fishing and pleasure craft.

The following table, compiled from D.B.S. Statistics of ships of 250 NRT and over (Ex. 1483) and from statistics contained in the District's annual reports (Ex. 326), indicates the extent and importance of general and pilotage traffic and the aggregate workload of the pilots. (For workload purposes one ship piloted means two trips, to which should be added 21 occasional movages since 1962.)

Year	D.B.S. Statistics (Ships over 250 NRT)		Pilotage Returns		
	No. of Ships	Average NRT	No. of Pilots	No. of Ships Piloted	Average NRT
1959.....	82	564.9	2	13	847.2
1960.....	80	547.4	2	14	996.5
1961.....	74	628.0	2	26	862.1
1962.....	96	579.5	2	25	788.8
1963.....	90	694.1	2	21	735.8
1964.....	85	627.7	2	32	820.3
1965.....	54	622.7	2	31	539.0
1966.....	87	629.0	2	35	682.9
1967.....	84	910.0	4	46	1,040.9

Neither D.B.S. nor pilotage statistics provide segregated data for Trenton. The pilots testified that only a small number of Irving Oil tankers proceed there, and that the small vessels that occasionally visit New Glasgow do not employ a pilot.

This table demonstrates the curious fact that, despite easy access and comparatively deep water, the vessels piloted in this District are, on the average, smaller than those calling at Caraquet. On a nine year average 75% of vessels over 250 NRT dispensed with the services of pilots. However, when larger ships entered the District in 1967 a larger number employed them. Traffic is mainly composed of oil tankers with tonnages varying from 300 to 1,000 NRT. A few foreign ships call for pulp and lumber, and two coastal passenger cargo vessels which do not employ pilots make regular calls (M.V. *North Gaspé* and M.V. *Fergus*).

2. PILOTAGE ORGANIZATION

The function of Pilotage Authority is performed by a board of three Pilot Commissioners, one of whom carries out the duties of Secretary-Treasurer. The tenure of office is stable. Mr. D. M. MacPherson, the Chairman, was appointed in 1962 replacing the late Mr. Ashton Munro who had been in office since 1936.

The appointment of the second member, Mr. J. F. English, dates from 1936, and the appointment of the third member and Secretary, Mr. R. F. English, dates from 1953. Mr. MacPherson testified that the Secretary is well informed and handles all the business of the Commission and there is, therefore, no reason to hold meetings.

The Secretary testified that all pilotage records prior to 1959 were lost in a fire which destroyed the waterfront, including the pilot office. He is the manager of the Magdalen Transportation Company. He considers his post with the local Commission a sideline and conducts its business from his own office free of charge. He further treats the salary he receives as the local Commission's Secretary (5% of the gross earnings) as office rental.

Mr. MacPherson agreed to the Secretary's suggestion that in small ports such as Pictou there should be no local Commission and that all the various functions associated with a public harbour, i.e., Harbour Master, wharfinger and Pilotage Authority, should be discharged by a single civil servant. He pointed out that a great deal of the Secretary's time was spent communicating with the Harbour Master and the wharfinger. The Department of Transport indicated that the suggestion might be difficult to implement because the various port administrative duties came under different branches of the Department.

The Secretary further stated that although he had obtained his position with the local Commission through political influence, politics did not, in any way, interfere with pilotage. He further considered that pilotage should not be compulsory and that the Master of a vessel should decide whether or not he needs a pilot.

3. PILOTS

For a number of years after 1926, there were four pilots on strength. From 1957 to 1966, the number was reduced to two, but was increased to four again in June, 1967.

The two pilots in 1963 had been licensed since 1953. One of them, Charles W. Fraser, was variously employed prior to receiving his licence. He spent several years in tugboats and for a period was engaged in laying cables in Northumberland Strait, during which time he obtained a Master's Certificate of Service for vessels up to 17 NRT. During his early youth he served as a pilot apprentice for about 12 years and made several trips with the pilots but never handled a ship until he became a pilot. To acquire his licence he passed an oral examination at Pictou before an Inspector of Masters and Mates who had previously been Harbour Master at Pictou.

Since becoming a pilot he had engaged apprentices from time to time. Their main duties were to look after and handle the pilot vessel, but occasionally he took them with him on pilotage trips. Some stayed for five or six years, but there was so little incentive they all left to seek better employment elsewhere. The local Commission did not provide in its regulations any rules for apprenticeship. The opinion was expressed that due to lack of financial incentive it would be difficult to obtain applicants.

The Authority does not regulate the pilots' annual leave or other absences, but permits the pilots to make arrangements among themselves.

There is no record of any shipping casualty for the past 15 years.

4. PILOTAGE OPERATIONS

At the time of the Commission's hearing in 1963, only one of the two pilots on strength, C. W. Fraser, was fully employed in pilotage. The other pilot, who had a full time local occupation as a rigger, acted as relief pilot performing only a few assignments per year. The pilots were satisfied with this arrangement. The Secretary was of the opinion that another pilot should not be employed for fear of losing the efficient pilot on strength, since there would not be sufficient remuneration for both.

Pilot Fraser received advance notice ranging from one to 48 hours that his services would be required depending on whether a departure or an arrival was involved. Such notice generally came from the Secretary but sometimes directly from the shipping agent.

Pilot Fraser used his own boat, usually operated by his son, and boarded vessels anywhere in an area nine miles seaward from Pictou Bar. If a ship was stopped and showed no sign of coming closer, he would go out as far as 14 to 15 miles. However, he boarded the majority of vessels in the deep water area off the gas and bell buoy that marks the eastern end of Caribou Channel about three miles from the fairway buoy at Pictou.

He disembarked from outbound ships proceeding eastward when clear of the channel off the fairway buoy, but he piloted vessels bound west through Caribou Channel and disembarked at its western end off Gull Island Light about seven miles from Pictou Channel fairway buoy.

Pilot Fraser testified that he did not pilot inwards in poor visibility because the land background makes the outside buoys too difficult to locate. The inside buoys are hidden by the land. He never had occasion to use radar.

The pilots themselves arranged for handling mooring lines when berthing or unberthing. They made no charge for this service.

A lack of detailed information makes it impossible to assess accurately the workload of the pilots but there is enough information to indicate that even in 1967 the workload for one pilot was far from sufficient to keep him fully employed. In that year there were 92 trips and no movages, an average of about 12 trips per month that were shared between the pilot and the relief pilot.

Pilot Fraser stated that it takes about one hour to one hour and a half to pilot a ship in and berth her and the outward trip is of approximately the same duration. Counting travelling time in the pilot vessel this makes an average of about three hours per trip from or to Pictou. The trip from Pictou to Trenton takes an hour and a half to an hour and three-quarters, and returning takes about one hour. Ships are not piloted there at night because the channel has too many curves and there are no leading lights for guidance.

Here again, the determining factor in fixing the number of pilots required is to the extent to which the availability of a pilot can be counted upon since pilotage in this District must be treated as a pilot's secondary occupation. If one pilot happens to have an occupation which leaves him free to take a pilotage assignment at short notice, a second pilot acting as a relief would be all that is needed (as was the arrangement for several years prior to 1967).

5. PILOTS' REMUNERATION AND TARIFF

The By-law provides for the pilots' earnings to be pooled and shared equally on the basis of availability for duty. The factual situation, however, is quite different. As seen earlier, for several years up to 1967, most of the work was done by one pilot, the other pilot merely acting as a relief. Their earnings were not pooled but each received the dues he had earned less his pro-rated share of the District operating expenses. Since the addition of two pilots

in 1967 the same method has been followed with the result that none of them received the same amount. For example, the remuneration of the two pilots in 1966 was respectively \$3,049.52 and \$175.64 while in 1967 it was by order of seniority \$1,731.57, \$295.08, 1,346.19 and \$1,955.16.

The pilots do not benefit from unemployment insurance or Workmen's Compensation. They do not participate in any group insurance or welfare plan.

The rate structure is the same as in the other local Commission Districts (for comments vide pp. 381-382).

The tariff realistically provides an additional charge for river piloting between Pictou and Trenton because most vessels do not proceed beyond Pictou.

6. FINANCIAL ADMINISTRATION

The Secretary conducts the business of the local Commission, which consists mainly of collecting pilotage dues on behalf of the pilots. There is no difficulty collecting these dues even when a ship which is subject to the compulsory payment of dues does not employ a pilot. In such cases the pilot boat charge is not made.

The By-law provides that the pilots' earnings should be shared equally among the pilots at the end of each month but each pilot is actually paid the dues he has earned personally (less the Secretary's 5% remuneration) as soon as the money is received. There is no other deduction—the few minor operating expenses of the Commission, e.g., telephone and stationery, are absorbed by the Secretary. Each pilot pays his own transportation expenses.

The annual reports contain only the aggregate amount of revenues collected and the amounts paid each pilot and the Secretary. The District gross earnings for 1959 and for 1967 amounted to \$776.78 and \$5,606.77 respectively. The marked increase is explained by the facts that the number of ships piloted and their size have increased substantially (vide table p. 489) and higher rates have been imposed since 1963.

Subsection X

PILOTAGE DISTRICT OF SHEET HARBOUR, N.S.

PREAMBLE

The Pilotage Authority of Sheet Harbour was invited to appear before this Commission during the hearings in Halifax in May, 1963, but no reply was received and, hence, no evidence was submitted (Ex. 1519(f)). The information contained in this Subsection is taken from District annual reports and other official documents.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

All special legislation for this District (except for appointments) is contained in the Order in Council creating the District and in the District General By-law.

(1) CREATION OF THE DISTRICT

The District's legal existence is governed by the Order made by the Governor in Council on December 8, 1938 (P.C. 3075, Ex. 1519(a)) which created it and appointed as its Pilotage Authority a Board of three Pilot Commissioners recruited locally. The same Order also decreed the compulsory payment of dues and fixed the District limits. Except for the name of the Pilot Commissioners, it has not been modified and is still in force.

The District limits are described as follows:

"All the coastal waters of the County of Halifax in the Province of Nova Scotia lying North of an imaginary line drawn from Taylor Head to Fishery Point, and West of an imaginary line drawn from Fishery Point to the front lighthouse of the Sheet Harbour Passage Range, and shall include all the tidal waters of Mashaboom Harbour and Sheet Harbour, and the tributary waters thereof as far as the tide ebbs and flows."

There is a conflict between this description and that of the Halifax District in that the Halifax District, according to its official description, includes all the navigable waters within and along the County of Halifax and, hence, those of Sheet Harbour (pp. 157 and ff.). This legal conflict will be automatically settled if, as recommended, the Halifax District is redefined to comprise only the confined waters of the port and its immediate approaches (p. 245).

(2) PILOTAGE AUTHORITY'S ENACTMENT

All the regulations made by the Pilotage Authority are contained in the District General By-law which was sanctioned by the Governor in Council on January 19, 1961 (P.C. 1961/69, Ex. 1519(h)).

This By-law, which is similar in form and content to those of the adjacent Commission Districts, is also a result of the standardization policy of the Department of Transport. It provides for pilotage fully controlled by the Pilotage Authority through the Secretary whose remuneration is 5 per cent of the gross earnings. The pilots' status is that of *de facto* employees who perform pilotage as directed by the Secretary and whose remuneration is an equal share of the net earnings of the District for equal availability. There is no apprenticeship and a pilot candidate need not have any marine qualification or any sea experience or experience in the pilotage waters of the District, provided he satisfies the Board of Examiners he possesses the required nautical and local knowledge. The first licence issued is probationary and is followed by a permanent licence if the services of the pilot are satisfactory. Absence is always without pay. The rate structure for pilotage voyage charges is the same as in the other Commission Districts, i.e., it is based on draught and tonnage (\$2 per foot draught plus 2¢ per ton). Movage rates vary with tonnage and there is a 50 per cent surcharge if the distance run is over four miles. The pilot boat fee is \$10. There is no regulation concerning exemptions.

2. HISTORY OF LEGISLATION

It is clear that pilotage in that region was unorganized prior to Confederation because none of the harbours now in the Sheet Harbour District are named in the governing pre-Confederation statutes (pp. 169 and ff.).

The only official pilotage that may have existed in Sheet Harbour after Confederation and prior to the creation of the District in 1938 was when the Halifax Pilot Commissioners appointed pilots for the outports between 1874 and 1908. However, there were no special regulations and the Halifax by-laws applied *mutatis mutandis* without legislative authority (pp. 159 and ff.).

As seen above, the District was created in 1938 by P.C. 3075 which, except for the name of the Pilot Commissioners, has not been amended or rescinded since.

The District's first By-law was sanctioned by P.C. 1129 of May 13, 1939 (Ex. 1519(b)) and remained in force until superseded in 1961 by the current General By-law. The 1939 By-law provided for fully controlled pilotage through despatching, pooling earnings and a common pilot vessel service. The By-law also established a boarding station inside the seaward limit and adopted a rate structure (still in force), including pilot boat charges. The only pilot licence was a term licence renewable every two years.

A 1952 amendment (P.C. 3622, Ex. 1519(d)) introduced a minimum voyage charge fixed at \$50, but this was not retained in the 1961 By-law.

Chapter B

BRIEFS

No brief was submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The District comprises two large, deep harbours: Sheet Harbour and Mashaboom Harbour, both situated in the bay between Taylor Head and Fishery Point, the seaward limits of the District.

Sheet Harbour, the main harbour, is considered one of the finest along the Nova Scotia Atlantic coast. The depth at the entrance is over 50 feet and, since the leading marks are clearly visible, little difficulty should be experienced entering in good weather.

At Church Point, some five miles from the entrance, the harbour divides into the northeast and the northwest arms. The village of Sheet Harbour is situated on the northeast arm. The wide approach channel provides good depths to a minimum of 32 feet up to Church Point and thence diminishing to 18 feet at the village of Sheet Harbour.

Ice forms about the middle of January and breaks up early in March. The District is well provided with leading lights and buoys; several new ones were placed in 1963. There is no record of shipping casualties.

The following table shows the extent and importance of traffic involving ships 250 NRT and over (Ex. 1483) and pilotage traffic (Ex. 1151) and, at the same time, indicates the workload.

Year	D.B.S. Statistics (Ships of 250 NRT and over)		Pilotage Returns		
	No. of Ships	Average NRT	No. of Pilots	No. of Ships	Average NRT
1959.....	14	1,487.8	1	15	1,865.1
1960.....	9	1,945.8	1	11	2,295.5
1961.....	12	1,772.7	1	12	839.2
1962.....	28	1,362.8	1	29	1,354.9
1963.....	25	1,389.2	1	27	1,475.0
1964.....	31	1,915.2	1	31	1,915.0
1965.....	24	2,240.0	1	23	2,274.3
1966.....	34	1,261.2	1	34	1,263.4
1967.....	24	734.1	1	23	750.0

This table clearly shows that the District serves only local needs which vary from year to year. Hence, traffic is variable and unpredictable. As a rule, all ships over 250 NRT take pilots as do a few smaller vessels on occasion. The reason why most vessels take pilots is apparent from cargo statistics: practically all cargoes handled involve foreign vessels. For example, in 1960, 1961 and 1964 no cargo was handled from coastwise vessels; 27,668 tons of cargo were handled from foreign vessels, but only 3,300 tons from coastwise vessels in 1967.

Shaw Steamship Co., Limited of Halifax complained to the Minister of Transport in 1961 about the compulsory payment of dues at Sheet Harbour. One of the company's ships, S.S. *Mayfall*, net tonnage 268, entered the harbour for a load of 240 cords of wood for Puerto Rico and was charged pilotage dues, despite the fact there was no pilot to meet the ship when she arrived in the District. The pilotage dues were \$31.36 on entry and \$35.36 on leaving which, the company charged, made the cost prohibitive for the small amount of cargo loaded.

S.S. *Mayfall* was obliged to pay dues because she was engaged in a voyage other than one defined in subsec. 346(e) C.S.A. and the general exemption to vessels of dominion registry is up to 250 NRT only, i.e., 18 tons less than the *Mayfall's* NRT.

The Minister suggested that Mr. Shaw approach the Pilotage Authority asking it to recommend to the Governor in Council that dues should not be compulsory. It is not stated whether the company made this request of the Pilotage Authority but it is known that the regulations have not been amended and that the company's vessels have not visited Sheet Harbour since that date.

2. ORGANIZATION AND PILOTS

The Pilotage Authority is still composed of three Pilot Commissioners recruited locally, one of whom doubles as Secretary-Treasurer. The tenure of office is stable. The present Commissioners were appointed in 1960, 1962 and 1965 respectively. Mr. I. J. Behie, who was replaced in 1962, had been in office for 22 years.

Since the establishment of the District in 1938, there have never been more than two pilots and from about 1950 only one pilot has been actively engaged in pilotage. A second pilot was licensed in 1964 but up to the end of 1967 he had not performed any pilotage duties. It is clear that this appointment became necessary because the other pilot, Mr. Ruben Power, Sr., was 68 years of age at the time. Although he reached 70 in 1966, his annual licence was renewed both in 1966 and 1967 and during those two years he performed all the pilotage in the District.

COMMENT

Since 1966, the legal situation has been that pilotage has been performed by an unlicensed pilot. The annual licence the Pilotage Authority purported to grant to Mr. Power was worthless because he had passed the final age limit fixed by sec. 338 C.S.A. The 1964 licence of pilot George Levy lapsed automatically in 1966 in view of the provisions of sec. 336 C.S.A. since he had done no pilotage during the two preceding years. His licence was reinstated in 1967.

The fact that Pilot Power is over age and, therefore, unlicensed does not make it illegal for him to pilot provided there is no licensed pilot available, but this should be only an occasional occurrence and not the rule. It is the duty of the Pilotage Authority to arrange for a competent pilot to be available for licensing and, if it is unable to find a candidate or fails to take appropriate action, the District should be abolished on the ground that the Pilotage Authority is incapable of performing its main function, namely, to act as licensing authority.

As indicated by the table on p. 500, the workload is light and can easily be attended to by one pilot.

3. FINANCIAL ADMINISTRATION

The District annual reports contain no financial information beyond aggregate amounts.

It would appear that prior to 1962 the pilot himself collected pilotage dues and that the Secretary at that time did very little beside preparing and forwarding the annual report. Although the By-law entitled him to 2 per cent of the earnings as remuneration, he took no pay. It would also appear that when the new Secretary took office in 1962 he assumed the responsibility of collecting pilotage dues and charged his remuneration, which the 1961 By-law had raised to 5 per cent of the District gross earnings.

Year	Gross Earnings	District Operating Expenses (including Secretary's remuneration)	Pilot's Remuneration
1958/59.....	\$ 1,281.40	nil	\$ 1,281.40
1959/60.....	1,575.27	nil	1,575.27
1960.....	1,252.22	nil	1,252.22
1961.....	1,323.68	nil	1,323.68
1962.....	4,069.96	\$ 102.09	3,967.87
1963.....	3,848.60	192.43	3,656.17
1964.....	5,048.14	251.42	4,796.72
1965.....	3,976.56	617.74	3,358.82
1966.....	4,418.92	900.81	3,518.11
1967.....	2,450.98	582.42	1,868.56

The preceding figures taken from the annual reports provide the only available financial information.

The substantial increase in gross earnings after 1961 is mainly due to the increase in pilotage traffic (vide Table, p. 500).

For the years 1963 and 1964 the District operating expenses corresponded to the 5 per cent remuneration of the Secretary. In the following years, this item shows a considerable increase and accounts respectively for 15.5, 20.4 and 23.8 per cent of the District gross revenues. The annual returns contain no explanation of this change nor any details of the various items of expenditures.

Subsection XI

PORT OF GASPÉ, QUE.

PREAMBLE

Publicly controlled or organized pilotage has apparently never been exercised in Gaspé although it came under the jurisdiction of Quebec Trinity House in 1805, formed part of the area composing the port of Quebec as defined in the 1805 Trinity House Act and Quebec Trinity House made regulations for it. Gaspé has never been included in the limits of a federal Pilotage District since Confederation. However, pilotage as a private enterprise has been performed there for many years and still is today.

GENERAL DESCRIPTION

Gaspé is situated at the head of Gaspé Bay which extends northwest along the east side of Gaspé Peninsula. Its geographical location suggests it should be grouped with the ports in the Bay of Chaleur rather than with those situated along the Gulf and River St. Lawrence.

Gaspé was proclaimed a public harbour by Order in Council P.C. 1158½ (sic) of September 22, 1874 (Ex. 923(i)). It is a Port of Entry.

The approach is wide, unobstructed and deep. It is entered through a deep channel 3½ cables wide between the north shore of the Bay and a breakwater that extends to Sandy Beach Bar. The main harbour, about 4½ miles long by a mile wide, provides a sheltered anchorage which was used for the assembly of convoys during two World Wars.

On the southwest shore of the harbour is the mouth of the York River. This forms the Southwest Arm on the north shore of which is the town of Gaspé which is joined to the village of Gaspé Harbour on the south shore by a bascule bridge, about 1,000 feet long with a 90-foot span. To the westward of the bridge and adjacent to it is located the main commercial wharves, with depths ranging from 17 to 28 feet alongside, and the shipping facilities of Gaspé.

About a mile eastward from the Southwest Arm is a large Government wharf with depths alongside at low water of 26 to 36 feet. In this area there is also a marine railway and a shipbuilding yard for draggers and wooden craft. High tides range from 4 to 5¼ feet. The harbour freezes over during the winter.

The harbour and its approach are adequately provided with aids to navigation. There are no navigational hazards or difficulties to impede a vessel into or within the harbour except when transiting the bascule bridge where great care must be taken.

The port serves regional needs, exports lumber, pulp wood, fish and ore, and is a railway terminal. Traffic consists of motor fishing schooners, small coasting vessels, coastal passenger ships, general cargo carriers, foreign ocean-going cargo vessels, small tankers and Government vessels.

The following figures provided by the Dominion Bureau of Statistics show the total number of vessels of 250 NRT and over that arrived at Gaspé from 1962 to 1967, together with the amount of foreign and coastwise cargo handled.

Year	No. of Vessels	Average NRT (per ship)	Tons Cargo Handled	
			Foreign	Coastwise
1962.....	87	1,642.6	21,947	144,222
1963.....	25	2,349.7	2,197	52,369
1964.....	58	2,283.7	11,035	125,759
1965.....	68	1,798.7	7,456	128,407
1966.....	63	2,908.6	15,701	156,705
1967.....	74	2,042.5	9,586	167,034

This table indicates, *inter alia*, that traffic consists mostly of regular coastal traders which least need the services of a pilot.

PILOTAGE SERVICE

Pilotage service is provided by local fishermen acting independently as private entrepreneurs. One of these "pilots", Mr. N. Roberts, stated that he occasionally meets a vessel four or five miles to seaward from Cape Gaspé, i.e., approximately 12 miles from the port, in order to "beat his competitors".

Foreign ocean-going vessels bound for Gaspé for the first time, invariably request the services of a pilot and generally also on subsequent trips, but local and coastwise vessels do not employ a pilot.

By general agreement among the pilots the price charged for their services is \$3 per foot of the *mean draught* of a vessel, a criterion not used in any Pilotage District in Canada. There is no additional charge. The pilot pays his boatman, usually \$15 or \$20 according to the size of the ship concerned. The pilots use their own fishing boats as pilot vessels.

Mr. Roberts complained of pilotage competition. Since the port is not within a Pilotage District, vessels are not bound to accept the first pilot who hails them but may select a pilot of their choice. Shipping agents generally choose their pilot and provide him with an E.T.A. Mr. Roberts complained that often before he can reach a vessel to which he has been assigned by the agent she has been boarded by another pilot bearing his family name (but not related) who is mistakenly accepted by the Master as the one chosen by the agent. The result is that the verbal instructions given by the agent with regard to timing and berthing are not carried out and, in addition, there are frequent disputes about which pilot has the right to pilotage dues.

Shipping agents give notice long in advance of the expected arrival of a vessel because the pilots are usually fishing and requests for their services are infrequent.

The "pilots" are unlicensed, uncertified seamen, but they are well acquainted with the harbour and adjacent waters and have gained skill by experience in coastal and other ships from time to time.

In 1935, Mr. N. Roberts endeavoured to obtain a pilot's licence but was informed by the Department of Marine that his request could not be complied with because the port of Gaspé was not within any Pilotage District, but that he was free to offer his services to any Master willing to accept them. This reply is used by Mr. Roberts as a sort of official document to establish his right to pilot (vide Part I, p. 40).

Local collectors of customs stated that about 20 foreign-going vessels call at Gaspé each season and employ pilots.

The only reported shipping casualties date from 1951 and 1953. In 1951, a vessel outward bound struck the bridge while passing under it and immobilised it for two months. Damages were assessed at \$25,000. In 1953, an Italian vessel approaching the Government wharf struck another vessel secured alongside. On both occasions local pilots were on board. No other accidents of a serious nature are reported.

The above shipping casualties prompted Mr. G. F. Allard, a licensed customs broker at Gaspé, to suggest that Gaspé Harbour be made a Pilotage District and the payment of pilotage dues compulsory.

This request was not granted on the ground that the Gaspé outer harbour and approaches are unencumbered and Masters can navigate their vessels without the assistance of a pilot, while the inner harbour serves only small local vessels whose personnel are well acquainted with the locality and would not require pilots. It was the opinion of the Department of Transport that the establishment of a Pilotage District at Gaspé was not warranted at that time.

Mr. T. J. Eden, the Harbour Master at Gaspé since 1942, suggested in his evidence that, since there is a certain demand for pilotage services, competent pilots should be licensed, presumably because certain Masters prefer to employ a pilot in case of an accident involving insurance.

Subsection XII

PORT OF CHANDLER, QUE.

PREAMBLE

Publicly controlled or organized pilotage has never been instituted at Chandler. The only Pilotage District created along the north shore of the Bay of Chaleur was the Bonaventure District which at no time included the port of Chandler (vide p. 357). Pilotage has always been, and still is, conducted as a private enterprise.

GENERAL DESCRIPTION

The port of Chandler is situated on the south shore of the Gaspé Peninsula at the entrance to the Bay of Chaleur about 15 miles southwest from Cap d'Espoir. It was proclaimed a public harbour in 1927 by P.C. 554 of March 29, 1927 (Ex. 511) in which its limits are defined as:

"All the waters of Baie des Chaleurs northwesterly of a line tangent to Pabos point running N.32°25' E. a distance of approximately three and a half statute miles to a point on the shore of said bay distant about 3100 feet from Vieux Quai."

Chandler is an open port and exposed to southeasterly and southwesterly winds. The only wharf, which is owned by the Federal Government, is situated at the eastern point of Anse à l'Ilot, and provides a berthing space of 450 feet on either side with a least depth of 22 feet alongside.

The approach to the port, which is made from the open sea on a course indicated by range lights, leads directly to the wharf. The end of the wharf is marked by a light and the only shoal along its approach is marked by a buoy. There is a minimum depth of 21 feet in the wide natural approach channel which runs for a distance of five cables from the edge of deep water.

The approach channel presents no navigational difficulties. However, in the area adjacent to the end of the wharf the depth is affected by a shifting sandbar. Berthing is a difficult manoeuvre at times because of the wharf's exposure to winds and tidal currents. Pilot Pierre Molloy stated in his evidence that with a rising tide a current is created that flows toward the wharf with a velocity estimated at three to four knots, depending on weather conditions, and with a falling tide a counter-current flows westward. As a result of the currents, a sandbar a foot or a foot and a half high is formed about 200 feet from the south end of the wharf. The sandbar is transient and disappears after a gale; then it gradually builds up again.

Because of the exposed position of the wharf to the prevailing winds and currents, all vessels are berthed with their bows to seaward to allow a quick departure in the event of adverse weather.

There are no tugboats available. When manoeuvring to berth, vessels are often turned on the anchor and allowed to drift slowly alongside. On other occasions vessels are turned at the end of the wharf using hawsers and the prevailing tide or current.

The tides rise from four to six feet. Although not completely ice free the port is open to navigation throughout the year.

The port serves local needs, and its main industry is pulp and paper. It is a Port of Entry. Customs also serve as immigration. Radio pratique can be obtained through the authorities at Quebec City.

MARITIME AND PILOTAGE TRAFFIC

Vessels calling at Chandler are local craft, small foreign ocean-going freighters and one or two tankers that make several calls throughout the year.

The following table based on statistics furnished by the Dominion Bureau of Statistics shows the number of arrivals of vessels of 250 NRT and over.

Year	D.B.S. Statistics (Ships of 250 NRT and over)	
	No. of Arrivals	Average NRT
1962.....	37	1,802.2
1963.....	38	1,744.3
1964.....	47	1,584.2
1965.....	51	1,696.2
1966.....	32	1,693.8
1967.....	21	1,790.6

Other D.B.S. statistics show that, on the average, foreign cargo is slightly above coastwise cargo.

This table confirms that the port serves only local needs which are variable and unpredictable. Most vessels use the services of local pilots, probably because there are few regular traders, and the Masters who call would not usually have up-to-date knowledge of the changing sandbar or currents off the wharf.

No major casualties have been reported. Pilot Molloy complained that the corners of the wharf were not sufficiently protected by fenders and, as a result, vessels were apt to get their shell plating dented by bumping against the wharf when berthing, as occasionally happened.

PILOTAGE SERVICE

Pilotage service is provided by two uncertified men, Mr. Pierre Molloy and his brother. The latter pilots only occasionally and is described as an apprentice who generally works with his brother and also operates their own fishing boat which serves as a pilot vessel.

In 1963, Pilot Pierre Molloy had been acting as a pilot for the previous twelve years. He had no previous sea experience but had travelled in ships on trials. From the age of 14 he was trained by his father who was a pilot before him and who is now Harbour Master at Chandler. He was trained in this way for twelve years before piloting alone and he has always been engaged in pilotage since then. There is no competition for pilotage services.

Pilot Pierre Molloy is advised by the shipping agent of ETA's and embarkation takes place three to five miles seaward from the wharf. Depending on weather conditions, it takes about an hour, but never longer than two, to pilot a ship in, including berthing. On departure, the pilot is not generally employed because the vessel is headed to seaward. However, if he is required for unberthing service, he spends 10 or 15 minutes on board advising the Master prior to departure, leaves the vessel at the wharf and thus saves time by avoiding a stop to disembark into the pilot boat.

July and August are the busiest months. During the winter there are only one or two vessels per month.

The charge for the pilot's service is a flat rate of \$125, which includes both inward and outward pilotage and pilot boat service.

Pilot Pierre Molloy stated that his *net earnings* were about \$50 per ship because from the \$125 he receives for pilotage he pays the cost of various services, namely \$25 for the boatman each time the pilot boat is used plus a \$5 fee to each of four linesmen required for each berthing. On this basis, the net earnings should be \$80, assuming that the pilot boat is used only once, but it was subsequently revealed that the discrepancy resulted from a \$25 "kick-back" which the pilot had to give most Masters who threatened to dispense with his services if he refused to pay the bribe.

Subsection XIII

RECOMMENDATIONS

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE COMMISSION DISTRICTS ALONG THE NEW BRUNSWICK AND NOVA SCOTIA COASTS AND PILOTAGE AREAS IN CHALEUR BAY AND GASPÉ BAY

RECOMMENDATION No. 1

The Existing Pilotage Services in the Districts of Restigouche, Bathurst, Caraquet, Miramichi, Buctouche, Shediac, Pugwash and Pictou, and Other Pilotage Services in Ports along the Mainland Coast Bordering on the Gulf of St. Lawrence and Northumberland Strait from Gaspé in the North to the Strait of Canso in the South, to Be Amalgamated in a Single Merger Type District

These Districts do not function properly because the organizational structure provided in Part VI C.S.A. does not apply to them, at least in practice. The basic principle, which is still valid today (vide General Recommendation No. 8, Part I, p. 476), that there be one distinct Pilotage Authority for each local pilotage service, can apply only where there is sufficient pilotage demand to keep a number of pilots fully occupied, e.g., a separate District is indicated at New Westminster, B.C., and a three-member Commission works well as its Pilotage Authority. However, to apply the same organizational structure in a District when there is little demand for pilotage results in over-organization and inefficiency. Most of these small individual Districts are relics of the past and except for the Districts of Restigouche and Miramichi, none would otherwise continue to exist. Like Gaspé and Chandler they no longer require the type of pilotage organization envisaged in Part VI C.S.A. Hence, most of these Districts should be abolished unless more practical alternatives can be provided under new legislation.

This Commission has recommended (General Recommendation No. 6, Part I, p. 470) that pilotage statutory provisions be extended to cover all the various situations that may be met and that the compromise solution of a merger type District be adopted in the case of a number of distinct pilotage services within the same geographical region whose individual importance does not warrant the creation of separate Districts (Part I, pp. 476 and ff.).

In a Pilotage District of the merger type a distinction should be made between the Pilotage Authority's "potential jurisdiction" and the Pilotage Authority's "actual jurisdiction", and both should be defined in governing Pilotage Orders.

To be effective, the organization of a merger District should be restricted to the pilotage services within the same geographical area where a Pilotage Authority can reasonably be expected to exercise the limited control required. This geographical area determines the extent of the Pilotage Authority's *potential jurisdiction*.

On the other hand, the District limits, in the accepted meaning of the term, should be defined to reflect the factual situation, i.e., the existence of a number of separate, unconnected pilotage services under one single Pilotage Authority. In the merger type organization, ports should not lose their physical identity, they should not be artificially connected by stretches of open water where pilotage is not required and each separate service should be governed by its own regulations (Part I, p. 478). In this way the District limits define the extent of *actual jurisdiction*. It follows that, if a port is included in a Pilotage District, a prerequisite is the availability of qualified pilots or qualified pilotage advisers. If there are none, the port should not be included; if the supply fails and there are no qualified applicants, the limits of the merger District should be amended immediately to exclude the port in question (unless pilotage service is classified as a public service, which is not the case here).

It is the Pilotage Authority's responsibility to keep itself *au fait* with the pilotage situation within the geographical area over its potential jurisdiction extends. This includes investigating the possibility and advisability of extending its actual jurisdiction (hence, control and surveillance) to pilotage services in other ports. It should forward its findings and recommendations to the Central Authority who will then be in a position to issue any necessary Pilotage Orders amending the Pilotage Authority's actual jurisdiction.

The merger type District is the suitable alternative in this case. The geographical area of the proposed District, hereinafter called the Gulf of St. Lawrence District, should extend along the mainland coast bordering the Gulf of St. Lawrence from the port of Gaspé in the north to the western entrance of the Strait of Canso in the south. Prince Edward Island and the Cape Breton area are specifically excluded from this area and should, as already recommended, continue to remain separate merger Districts (p. 24 and p. 340).

The existing pilotage services in the Districts of Restigouche, Bathurst, Caraquet, Miramichi, Buctouche, Shediac, Pugwash and Pictou, the private services now provided in Gaspé, Chandler, Belledune and Restigouche, and

other ports where a demand for pilotage develops should come under the actual jurisdiction of the Pilotage Authority of the proposed Gulf of St. Lawrence District, always subject to the availability of competent pilots or pilotage advisers.

RECOMMENDATION No. 2

The Various Pilotage Services within the Proposed Gulf of St. Lawrence District to Be Classified as Private Services

According to the criteria enunciated in General Recommendation No. 17 (Part I, p. 509), the various pilotage services listed here should all be classified as *private services*. They all serve only their immediate neighbourhood and the economy of the country would not be adversely affected if pilotage was discontinued at any one.

Therefore, if local interests consider pilotage to their advantage, it should be their responsibility to offer sufficiently attractive inducements to enlist and retain suitable pilots or pilotage advisers.

The powers and responsibilities of the Pilotage Authority would be limited to licensing (including surveillance and appraisal) rate-fixing and making the necessary regulations for the discharge of these functions. The number of pilots or pilotage advisers should be limited, since constant practice is a basic requirement for maintaining and improving local knowledge and skill, but consideration should also be given to local circumstances with the aim of ensuring constant pilotage service without imposing unduly on individual pilots or pilotage advisers who may be obliged to accept other employment.

The Pilotage Authority should have neither the responsibility nor the power to provide service: this should be organized locally by private arrangements. However, no franchise should be issued except the obligation inherent in a licence that only licensed pilots or pilotage advisers are to be employed.

The regulations should define the procedure to be followed by vessels requiring pilotage service, i.e., the ETA's ETD's or other requirements and they should be published in *Notices to Mariners*.

The Pilotage Authority should also make and amend regulations to ensure the constant availability of pilots, bearing in mind local conditions. These regulations should normally be suggested by the pilots as a group and then incorporated in the regulations if approved by the Pilotage Authority. They should make unjustified refusal or neglect to meet a request for pilotage an offence punishable by suspension of the licence and withdrawal in the event of a recurrence.

RECOMMENDATION No. 3

**The Pilotage Authority to Be Empowered to
Issue Pilotage Advisers' Licences**

The Pilotage Authority should be authorized to issue Pilotage Advisers' licences (General Recommendation No. 12, pp. 492 and 493) because qualified mariners are not always available to qualify for a pilot's licence and the navigational problems encountered in the various ports of the proposed Gulf of St. Lawrence District are not complex.

The satisfactory service the great majority of "pilots" have given in the small Commission Districts (despite the fact they do not possess any marine certificate of competency) indicates that there is no need to change a system which has worked well. However, these men should not be called *pilots* because the Pilotage Authority can not vouch they are competent to take charge of the navigation of the various types of vessel that call at these ports. A Pilotage Adviser's licence would by its very name be a warning to Masters that the holder's qualifications are limited.

RECOMMENDATION No. 4

**The Pilotage District of Sheet Harbour to Be Attached for
Licensing and Rate-fixing Purposes to the District of Halifax;
Other Pilotage Services in Ports along the Atlantic Coast of
Nova Scotia (Cape Breton Island Excepted), and in the Bay
of Fundy to Be Attached for the Same Purposes to either
the District of Halifax or the District of Saint John as the
Central Authority May Deem Advisable**

The various services that exist, or may exist, in ports along the Atlantic coast of Nova Scotia, except Cape Breton for which a separate recommendation is made, and in the Bay of Fundy are too far removed from the Gulf area to be included in the proposed Gulf of St. Lawrence District. Furthermore, they are too far apart and not important enough together to warrant the creation of another merger type District. On the other hand, the existence of two important Pilotage Districts nearby provides an opportunity to have the limited control required exercised by the Pilotage Authority of either District (vide General Recommendation 8, Part I, p. 479).

The responsibility and power of the Halifax or Saint John Pilotage Authority, as the case may be, would be limited to licensing, including surveillance and reappraisal, rate-fixing and making the necessary regulations for the discharge of these functions. Therefore, in the case of Sheet Harbour, it would be the responsibility of the Halifax Pilotage Authority to make the applicable regulations. Pilotage there, as elsewhere in this area, should be classified as a private service.

Section Six

PILOTAGE DISTRICT OF ST. JOHN'S, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Since January 1, 1965, the pilotage organization of St. John's has come under Part VI of the Canada Shipping Act. The only legislation that now applies specifically to this District is contained in the regulations made by the Governor in Council in December, 1964, establishing the District and appointing its Pilotage Authority, and one Order in Council passed in August, 1959, authorizing the Department of Transport to provide the pilot station and pilot vessel service at public expense. There are no regulations made by the District Pilotage Authority.

Sec. 18 of the Terms of Union of Newfoundland with Canada Act (13 Geo. VI c. 1) provided for the continuity of legislation and administration during the transition period in that the laws in force in Newfoundland at the time of Union were to continue in effect until repealed or altered by the Parliament of Canada, if under federal jurisdiction, and the regulations made under such Newfoundland laws were to remain in effect until revoked or amended. Federal statutes in force at the time of Union were to apply in Newfoundland when so directed by an Act of Parliament or by proclamation of the Governor General in Council. Commissions, authorities, officers and officials were to remain unchanged until altered, abolished, terminated or dismissed by the appropriate authority.

On April 1, 1949, the Governor General issued a proclamation bringing into force in the Province of Newfoundland certain statutes of the Parliament of Canada, effective that day, including the Canada Shipping Act, 1934, except sec. 21 and Part VI which deals with pilotage. Therefore, with respect to pilotage, the laws of Newfoundland in force at the time of Union were not affected and continued to govern pilotage matters. The same situation prevailed regarding the legislation governing the Newfoundland ports. Any of these ports could have come under Part X of the Canada Shipping Act if it had been proclaimed a "public harbour" as required by sec. 600 C.S.A. but this was not done. Nor did they come under the National Harbours Board for lack of an Order in Council issued pursuant to subsec. 6(1)(b) of the National Harbours Board Act to that effect.

It took fifteen years to bring the port of St. John's and its pilotage service under federal laws. One main problem appears to have been whether St. John's harbour would become a port administered by the National Harbours Board or by an autonomous Commission under Part X C.S.A. On the pilotage side, difficulties arose deciding the type of Authority with which the District should be provided, the status of the pilots and how to make the new regulations which would have to be in conformity with Part VI C.S.A. Many attempts were made between 1949 and 1964 to complete the necessary arrangements so that Part VI C.S.A. could be proclaimed, but all proved fruitless.

In 1964, the Federal Parliament passed an Act titled "An Act to repeal certain Acts of the Province of Newfoundland respecting Harbours and Pilotage" (13 Eliz. II c. 33) which abrogated as of a date to be fixed by proclamation all the Newfoundland legislation concerning ports and pilotage. The pertinent section dealing with the legislation of the port and Pilotage District of St. John's reads as follows:

"3. An Act respecting Pilotage and to provide for regulations for the Port and Harbour of St. John's, No. 1 of the Statutes of Newfoundland, 1946, and The Port and Harbour of St. John's Act, Chapter 217 of the Revised Statutes of Newfoundland, 1952 and all amendments thereto and all orders, rules and regulations made thereunder are repealed."

On December 23, 1964, the Government arranged by a series of proclamations and orders for the pilotage service at St. John's to come under federal legislation:

- (a) a first proclamation (SOR/65-21) giving effect, as of December 31, 1964, to sec. 3 of the 1964 Act and thereby abrogating the whole of the Newfoundland legislation, including regulations, that had hitherto governed the pilotage service at St. John's (Ex. 1462 (b));
- (b) a second proclamation (SOR/65-22) making Part VI C.S.A. applicable to Newfoundland effective January 1, 1965 (Ex. 1462 (b));
- (c) an Order in Council made under secs. 324 and 326 C.S.A. creating under Part VI C.S.A., effective January 1, 1965, the Pilotage District of St. John's (P.C. 1964-2019, Ex. 1462(f)), fixing its limits and making the payment of pilotage dues compulsory;
- (d) a further Order in Council made under sec. 325 C.S.A. appointing, effective January 1, 1965, the St. John's Pilotage Authority (P.C. 1964-2020, Ex. 1462(f)).

Coincidentally, by Order in Council P.C. 1964-1923 dated December 10, 1964, made pursuant to Term 33 of the Terms of Union and of subsec. 6(1)(b) of the National Harbours Board Act, the Port of St. John's was transferred to the National Harbours Board. The assets and properties of

the defunct Harbour and Pilotage Authority were vested in the National Harbours Board with the exception of some buildings and pieces of land used for specific purposes which were transferred to the Department or Crown Corporation concerned, e.g., the sites known as "Queen's Wharf" and "King's Wharf" together with certain adjacent premises were transferred to the Department of Transport "for purposes appurtenant to Pilotage" (Ex. 1463(f)).

Neither at that time nor up to the present (mid 1969) have any regulations been made by the Pilotage Authority.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of St. John's was created as a federal Pilotage District by P.C. 1964-2019 effective January 1, 1965. The Order also made the payment of pilotage dues compulsory and fixed the District limits to cover the same area as defined under the repealed legislation, namely:

" . . . to include therein all of the navigable waters of St. John's Harbour west of a line from North Head to South Head and the waters two miles to seaward from any point on the said line;"

By a separate Order in Council, P.C. 1964-2020, also effective January 1, 1965, the Governor General constituted the Pilotage Authority which continued the system of a local Commission and reappointed the three former Harbour and Pilotage Commissioners, Mr. J. C. Grieve, Chairman, Mr. J. E. Hickey and Captain J. J. Whelan, members. There was, however, a substantial difference in their jurisdiction in that it was limited to the pilotage service. The port as such was to be administered by a separate Port Authority, the National Harbours Board, and its local representatives who at present (mid 1969) are Mr. B. E. Higgins, Engineer, as Port Manager, Captain H. W. Stone who was continued as Harbour Master and Mr. W. J. Channing as Administrative Officer.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Since sec. 3 of c. 33 of the 1964 Act and Part VI C.S.A. came into force no District regulations have been made by the Pilotage Authority.

The former District regulations could not survive the repeal of the Newfoundland statute under which they had been made by reason of the specific repeal of all such regulations (sec. 3 of the 1964 Act). Therefore, since January 1, 1965, the District has been deprived of an essential part of its required legislation without which it can not legally function. *Inter alia*, there is no tariff and, hence, the compulsory payment of dues can not be enforced and the Pilotage Authority has no power either to collect or to handle pilotage monies. For lack of criteria for establishing

the qualifications of candidates, the Pilotage Authority can not exercise its licensing powers nor can it deprive of his licence a pilot who has become physically or mentally unfit.

With regard to exemptions to the compulsory payment system, since the Pilotage Authority has so far made no regulations under sec. 347 and subsec. 346(c) C.S.A., the applicable exemptions (if a tariff is legally established) are the absolute and relative exemptions set out in sec. 346 and subsec. 357(2) C.S.A. (Part I, pp. 221 & ff.). It follows that foreign ships (non-dominion registry) do not enjoy any exemption even if they are under 250 NRT. Hence, all foreign ships engaged in fishing are subject to the compulsory payment of dues. On the other hand, since all steamships registered in one of the dominions are exempted when engaged in any of the voyages defined in subsec. 346(e) C.S.A., all CNR vessels, both ferries and coasters, have been exempt since Jan. 1, 1965.¹

Since January 1, 1965, the St. John's Pilotage Authority has been operating in complete illegality by continuing to apply, in spite of Parliament, the regulations which were specifically repealed by the 1964 Act, and by adopting new rules and new rates that have neither been approved by the Governor in Council nor published as required by Part VI C.S.A. and the Regulations Act.

The Department of Transport Auditor's report dated March 11, 1966 (Ex. 250) contains, *inter alia*, the following remarks on the matter:

"2. As at the date of audit, February 4th to 8th, 1966, no bylaws for the Authority were formally approved. Considering this lack of bylaws, the fees which are charged, have little legal formality and approval."

...

"5. The following are excerpts from the minutes of the meeting of the Authority held on November 15, 1965, in the Harbour Master's Office.

"Item 4(a)"

It has been sanctioned by the Pilotage Authority at to-day's meeting that pay for the secretary of the Pilotage Authority be granted in the amount of \$750.00 in appreciation of his services, retroactive from June 1, 1965.

"Item 4(b)"

It has also been decided at to-day's meeting that the annual stipend for the St. John's Pilotage Authority members be in the aggregate of \$1,200.00 per annum to be retroactive as from January 1st, 1965.

¹ This is the legal situation under the existing statutory legislation (vide Part I, pp. 221 & ff.). It may be added that all ships, including fishing vessels, without regard to size or nationality enjoy an absolute statutory exemption (hence, one that can not be changed by regulation) if entering the harbour of St. John's for refuge (subsec. 346(g) C.S.A.). With regard to the preferential treatment given by sec. 346 to ships registered in any of Her Majesty's dominions, it is quite possible that these provisions of the Act may come in conflict with treaties such as the 1954 Trade Agreement between Canada and Portugal, but such treaties do not affect the validity of the federal legislation involved. Parliament and the Department of Transport were fully aware of such possible conflicts and the question was raised, *inter alia*, in 1959 during the debates on Bill S-3. Vide Part I, pp. 224 and 225 re the legality of compulsory pilotage, if and when imposed on grounds of safety of navigation.

6. It may be observed from the attached financial statement that the amounts of monies mentioned in paragraph 5 were paid out.

7. The Canada Shipping Act Part VI, permits the Authority, with the sanction of the Governor in Council, to remunerate a legally appointed Secretary. The Canada Shipping Act does not appear to permit remuneration for other Board members”.

The Auditor recommended that: “the Authority be correctly authorized to fully conduct the business of the enterprise”.

No serious heed was given to this warning and to date these practices have been continued illegally.

It is further noted from the financial statements that higher rates are being charged without any supporting authority, e.g., the 3 per cent surcharge has been increased substantially to 6 per cent or possibly more.

In a letter dated February 4, 1969 (Ex. 1463(j)) the Department of Transport informed this Commission that a new General By-law was finally agreed upon and signed by the Pilotage Authority of St. John's on March 29, 1967, after numerous draft copies had been submitted by the Department. However, this By-law was not submitted to the Governor in Council for approval because negotiations were continuing between the St. John's pilots and their Pilotage Authority concerning a tariff increase. Following the publication of Part I of this Report the legal advisers of the Department felt the proposed By-law should be redrafted before being submitted to Council. As of February 1969 redrafting had not yet been completed.

This is a most serious state of affairs. It is a further glaring example of the basic cause of the serious problems which have beset pilotage and have resulted in the loss of authority of those in charge, i.e., the apparent failure by those officers and officials charged by Parliament or the Government with pilotage responsibilities to appreciate that under the scheme of organization of Part VI C.S.A. legislation in being is the limit of their powers, rights and obligations, and that to exceed whatever is specifically authorized in the Act and the regulations made under it is to act illegally. Such action by officers of the Crown should not be tolerated no matter how justifiable the measure or action appears to be.

Regulations need not all be made and approved at the same time, nor must they be final. The ease with which they can be amended and brought into force is the essential advantage of legislation by delegation. The District should not have been allowed to function without basic regulations. For instance, the fact that the pilots were pressing for an increase in the rates was no bar to adopting the former tariff as an interim measure, subject to modification if and when the pilots' requests were met. Nor was the lack of agreement on other provisions of the proposed regulations justification for not at least adopting a tariff by itself. The most pressing responsibility was not to

allow the District to function without a legally established tariff, and a possible increase in the rates was a matter of minor importance. The same remarks apply to all other subject-matters of the District regulations.

The Pilotage Commissioners have continued to employ as Secretary of the Commission Capt. H. W. Stone, who was also retained by the National Harbours Board as Harbour Master.

(3) ORDER IN COUNCIL NOT PASSED UNDER THE CANADA SHIPPING ACT AND AFFECTING THE ORGANIZATION OF THE PILOTAGE DISTRICT

Order in Council P.C. 1959-19/1093 dated August 27, 1959 (Ex. 52) extended to the Pilotage Districts of St. John's, Nfld., and New Westminster, B.C., authority for the Department of Transport to assume the cost of establishment and operation of pilot stations and pilot vessel service.

2. HISTORY OF LEGISLATION

It appears that the first pilotage legislation applicable to St. John's dates back to April 17, 1833, when "An Act for the Regulation of Pilots and the Pilotage of Vessels at the Port of St. John's" was adopted (3 W. IV c. 7). As the title indicates, it was not an Act of general application but was restricted to St. John's. Pilotage in St. John's continued to be governed by its own special legislation until this legislation was superseded January 1, 1965, by Part VI of the Canada Shipping Act.

The various provisions of the 1833 Act bear a close resemblance to Canadian pilotage legislation since they all come from the same source—the pilotage legislation of the United Kingdom. Furthermore, this Act established the pattern for the development of pilotage throughout Newfoundland. The statutes governing pilotage which were in force at the time of Confederation with Canada were modelled on this Act, some sections of which were repeated word for word.

The 1833 Act provided for limited Government control over free enterprise pilotage services. The powers of the Pilotage Authority were limited to licensing and making regulations concerning the marking and rigging of pilot boats, "extra remuneration in cases of extraordinary kind", and the further regulation of pilots. Such a By-law had to be approved by the Governor or Commander-in-Chief. Since the 1833 Act was *ad hoc* legislation for St. John's, it dealt with certain matters normally left for regulations, such as the constitution of the Pilotage Authority (the Act established a Commission of five members) and the fixing of rates, which took the form of a scale based on "ships rates" for H.M. ships and on tonnage for others. The Act listed a series of offences concerning the conduct of pilots and various violations of its provisions, and also made the payment of pilotage dues compulsory. It

provided for an *Expense or Maintenance Fund* to defray the salary of the Secretary and other contingent expenses relating to the implementation of the Act. The surplus, if any, was to be appropriated for the benefit of disabled pilots. The money required for the *Maintenance Fund* came from three sources: a five per cent compulsory contribution from all pilotage dues earned, fines after deduction of one-third to be paid to the informer, and licence fees. The Act applied to both licensed and unlicensed pilots, the latter being obliged, however, to give up the guidance of a vessel to the first licensed pilot who came on board. Any pilot taken to sea against his will was entitled to receive compensation for loss of time at the rate of three pounds, ten shillings per month over and above his board and his passage home. The Act acknowledged the liability of both licensed and unlicensed pilots for negligence, and sec. 9 provided that it was not to be construed as relieving "any licensed or other pilot from his responsibility to answer for the amount of any loss sustained through his improper conduct in a civil action at the suit of the party injured".

Between 1833 and 1946, in which latter year the Port and Harbour of St. John's Act was adopted, several statutory changes were made. The main one came in 1928 when the function of Pilotage Authority was merged with that of Harbour Authority and the duties and responsibilities of both functions were entrusted to a Commission of three members. Thus, the operation of the port and the function of the Pilotage Authority were combined for the first time and remained so until divided again, as seen earlier, effective January 1, 1965.

The Port and Harbour of St. John's Act was adopted in 1946. It was mainly a consolidation of the previous statutory legislation. It retained the feature of the function of Pilotage Authority being vested in the Harbour Authority. The duties and responsibilities of the Pilotage Authority were still limited to those exercised over a service provided by pilots who were private contractors.

The 1946 Act specifically abrogated all previous legislation governing the port of St. John's and its pilotage service (including the regulations). In order to provide continuity, new port and pilotage regulations were enacted together by the Legislature and appeared in the form of schedules to the Act. Thereafter, these regulations could be amended by the Harbour and Pilot Commissioners from time to time as required.

This Act was divided into four parts: Part I dealt with interpretation, Part II with the creation of the Harbour Commission and its powers, Part III with the powers of the Commission as Harbour Authority and Part IV with pilotage. Part IV was in itself a distinct, complete pilotage statute which applied only to the pilotage service of the port.

Still being *ad hoc* legislation, the Act established the legal existence of the District, determined its limits and designated the Harbour Authority

as its Pilotage Authority. It was, however, limited in its application to licensed pilots, the term "pilot" being defined as "pilot duly licensed for the District" (Part I, p. 22). However, it applied to all vessels which were defined as meaning "any ship, vessel or boat of any kind whatsoever" and, therefore, had a much broader application than Part VI of the Canada Shipping Act (Part I, pp. 213 & ff.).

The Port Authority was "a Commission of three persons to be known as the St. John's Harbour and Pilotage Commission". The Commissioner for Public Utilities was *ex officio* Chairman of the Commission. The other two members were to be appointed by the "Governor in Commission" and had to be connected with trade and shipping. The members, other than the Chairman, were to receive a remuneration not to exceed \$500 per year, provided they did not hold any salaried appointment under the Government of Newfoundland.

The function of the Secretary and Chief Executive Officer of the Commission was discharged, in addition to his other duties, by the Harbour Master who also was a Government appointee. The organization was to be financially self-supporting and the Authority was given power to pay its operating expenses, including the maintenance of pilot boats and the general expenses of the pilotage service, out of the aggregate amount of funds received by it from any source, including harbour dues, without any formality other than the obligation to account yearly to the Commissioner for Finance.

The Act provided for the compulsory payment of pilotage dues. Apart from exemptions to be provided in regulations, there was an absolute exemption for Government ships and for vessels exempted by other statute or treaty. There appears to have been no other statute providing for any exemption and, with respect to those arising from treaty obligations, no such exemptions were claimed between 1949 and 1965, nor were there any apparently ever applied up to the time of Confederation. A vessel was automatically exempted if, having shown the required flag before entering the narrows, it had not been spoken to by a pilot.

The Commission's regulation-making powers with regard to pilotage were very similar to those enumerated in sec. 329 C.S.A. with, apparently, unlimited powers to grant exemptions but not to withdraw the few stipulated in the Act.

Despite the fact that only annual licences were issued, pilots were guaranteed permanency of tenure in that the annual licence was to be renewed automatically upon payment of the prescribed \$5 renewal fee. There was no ultimate age limit but a physical fitness certificate was a prerequisite for renewal after the age of 65.

As under the Canada Shipping Act, the owner of a vessel was responsible for the act of the pilot as if he were his servant but the Act did not limit the pilot's own responsibility.

It contained the usual provisions regarding the overcarriage of a pilot and his forced detention due to quarantine but, in addition, it also provided a \$200 fine for the Master of a vessel who took a pilot to sea against his will.

The District by-laws contained in the second Schedule of the 1946 Act were amended four times before they were abrogated January 1, 1965. All such amendments concerned rates, financial administration and the control of pilots.

Despite the fact that the by-laws stated that the Commission Secretary, i.e., the Harbour Master, had the control of pilots, it was a control that was to be exercised in a very general way over a free enterprise system. The regulations left it entirely to the pilots to arrange for the provision of services and the disposal of the dues they earned. Although the dues were to be handed over to the Harbour Master, he had to remit them to the pilots after the prescribed deductions were made "at such time and in such a manner as may be arranged with the pilots". The pilotage dues were the absolute property of the pilot who earned them and it was left entirely up to him to make whatever arrangements he wished with the other pilots as to their disposal. If pooling was effected, it was merely through a private agreement arrived at by all pilots which the Pilotage Authority, through its regulations, had consented to accept.

To cover the operating expenses of the District the regulations provided a surcharge on rates for inward and outward trips (extended in 1957 to all pilotage dues except pilot boat charges). The money so collected belonged to the Harbour and Pilotage Authority as the pilotage contribution toward the general expenses of the port, including pilot vessel service, salaries and expenses of clerical staff and the establishment of trust accounts (Benevolent Fund) for licensed pilots. This surcharge was fixed in the 1946 By-law at 10%, later raised to 15%, but was reduced to 3% in 1960 when the Department of Transport assumed the responsibility of providing pilot vessel service. On this occasion, the \$10 pilot boat charge was added to the tariff which was to be paid over to the Receiver General of Canada as part reimbursement for the cost of maintaining pilot vessel service.

In the discharge of his responsibility toward the pilots the Harbour Master was assisted by two Master Pilots (no doubt one for each watch) whose duties were limited to surveillance over the pilots' conduct and attendance. These Pilot Masters were elected each year by the pilots themselves, and represented the pilots just as Pilot Committees do in other Districts.

Like Part VI of the Canada Shipping Act, the St. John's Act left the qualifications required of a candidate for a pilot's licence to be determined by regulation. The original 1946 regulations on this matter remained

unchanged. The only requirement was that candidates be examined by the Board of Examiners for Masters and mates for Newfoundland with respect to local knowledge, the International Rules of the Road, quarantine, Harbour Regulations, and other subjects pertaining to the duties of a pilot that the Board considered necessary. Pilots were also to be physically fit. The regulations did not provide for apprenticeship nor require even a minimum marine certificate of competency or any sea experience.

The regulations retained the unique form of Pilot Fund that had been instituted in 1940, and the system of individual trust accounts devised to provide a retirement benefit (p. 563).

The tariff and regulations regarding exemptions were last legally defined in the 1957 and 1960 By-law amendments. The tariff items will be studied in detail later.

The exemptions contained in the By-law affected Canadian vessels engaged in fishing or transporting passengers or goods between places in Newfoundland. These vessels were exempt from the payment of dues if no pilot was engaged and had to pay only half rates if one was employed. These exemptions, which originally applied only to Newfoundland vessels, were extended to Canadian vessels after Confederation.

In 1952, the 1946 Act was incorporated in the Newfoundland Revised Statutes where it became Chapter 217. Its only modifications were those necessary to bring certain expressions up to date; for instance, the expressions "Governor in Commission" and "Commission for Public Utilities" were replaced by "Lieutenant-Governor in Council" and "Minister of Public Works".

No doubt to dispose of any possible controversy whether the Provincial Government had power after Confederation to deal in any way with the pre-Confederation Newfoundland statutes concerning matters of the original jurisdiction of the Federal Government, sec. 3 of the 1964 Act mentioned both the 1946 Act and Chapter 217 as being repealed, together with all regulations made thereunder.

Chapter B

BRIEFS

Three briefs were filed by:

- (a) The St. John's Harbour and Pilotage Commission (Ex. 252);
- (b) St. John's Pilots' Brief and Annex (Ex. 254);
- (c) The Canadian Merchant Service Guild (Ex. 1382).

(The references following each recommendation in the briefs show where the subject is covered in the Report.)

(1) THE ST. JOHN'S HARBOUR AND PILOTAGE COMMISSION

The main part of their brief refers to a situation that has been corrected, i.e., certain difficulties connected with the St. John's Commissioners' function as Port Authority from the time of Confederation until pilotage and port operations finally came under federal law effective January 1, 1965. Since that time, they, like any other Pilotage Authority in Canada, have had full power to discharge the limited responsibility derived from the C.S.A. provided they take advantage of the provisions of Part VI to make the necessary regulations. The Pilot Commissioners now have no responsibility for the port itself, except an implied duty to cooperate with the Port Authorities and convey to them suggestions for improvements to facilities which would enhance pilotage efficiency and the safety of navigation.

They also recommend that pilotage in their District be organized as in the Districts of Sydney, Halifax and Saint John, N.B., and that their pilots be placed on a comparable financial basis. In particular:

- (a) In the event of the pilots becoming civil servants, they recommend that they should receive equal consideration because they consider them equal in all aspects to pilots in other Canadian ports (pp. 210 and 554).
- (b) The pilot vessels should be replaced because they were "advanced in age and wear and tear" (p. 544).
- (c) The pilots should be provided with an official, permanent pilot station constructed on the same site where the pilots have

temporary, unsuitable quarters, i.e., on Queen's Wharf in line with the range lights indicating the centre of the entrance channel. This site provides a clear seaward view through the entrance channel, i.e., The Narrows, and permits the pilots on watch to see the visual signals of foreign fishing vessels which often fail to give notice of their arrival off the port, generally because their RT equipment is out of order (p. 543).

- (d) The landing at Queen's Wharf should be improved to provide proper moorings for pilot vessels and embarkation and disembarkation facilities for pilots and pilot vessel crews (landing access completely rebuilt 1965-66, Ex. 1463(v)).

(2) ST. JOHN'S PILOTS' BRIEF

The pilots express their satisfaction with the organization of pilotage at St. John's and recommend that the basic organization be retained with some improvements.

Their main recommendations may be summed up as follows:

- (a) The pilotage service at St. John's is an important service to shipping and should be maintained (p. 566).
- (b) Compulsory pilotage or compulsory payment of dues should also be retained (p. 539).
- (c) New pilot vessels should be provided to replace those in service (p. 544).
- (d) The location of the pilot station and the pilot boat mooring should not be changed (p. 543).
- (e) Since the earnings of the St. John's pilots are far below those of a large percentage of pilots elsewhere in Canada and of Masters of a large percentage of ships, appropriate measures should be taken to ensure the pilots an income commensurate with their qualifications, duties and responsibilities (p. 554).
- (f) The Government should help to provide an adequate pension scheme for the pilots (p. 564).
- (g) Coastal pilots should be competent, experienced and preferably licensed. The St. John's pilots are most suitable to perform coastal pilotage and two or three of them should be made available at all times for this work (Subsection VI, Recommendation 3).

(3) THE CANADIAN MERCHANT SERVICE GUILD

The Canadian Merchant Service Guild's brief deals mainly with pilotage in general, but contains one section that specifically supports the St. John's pilots' recommendation on coastal pilotage (Subsection VI, Recommendation 3).

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The Pilotage District of St. John's comprises the harbour of St. John's, The Narrows and two miles of open water.

St. John's, the capital city and principal port in the Province of Newfoundland, is situated along the perimeter of a land-locked harbour sheltered by high hills and is open to navigation all year round.

The restricted entrance from the sea, called The Narrows, does not form part of the harbour. The harbour limits are described as follows (P.C. 1964-1923, Ex. 1463(f)):

"(1) . . . All that area, including the shore at High Water Mark, extending in a general eastwardly direction to Chain Rock and extending in a general westwardly direction from Prosser Rock, from and to a line drawn North and South at the western end of the "Gas Works" (which "Gas Works" are situate westward of Long Bridge), the eastward Harbour Limit being a line drawn from Chain Rock to Prosser Rock aforesaid."

The port is operated and controlled by the National Harbours Board and is a Port of Entry. The port provides all major shipping facilities including some 37 berths at wharves with 20 to 33 feet alongside, a dry-dock, machine shops, repair yards and heavy lift cranes. The harbour is frequently used as a port of refuge and a focal point for supplies and repairs for the multi-national fishing fleets that operate in the waters of the nearby Grand Banks and those off Greenland.

The entrance to The Narrows has high land on either side and is not visible from a distance, but as the land is approached its position may be identified by Cape Spear, Fort Amherst and the buildings and flagstaffs on Signal Hill. The entrance lies between North and South Heads, 330 yards apart, and thence a channel leads westward through The Narrows for about 5 cables to the open, deep harbour. The western portion of The Narrows for a distance of about 900 feet to a position 200 feet north of Prosser Rock Light buoy is restricted by rocks marked by light buoys and has a width of 250 feet at its narrowest point. This stretch of the channel has a controlling depth of 37 feet, while Merlin Rock has 35 feet of water over it at low water spring tides. The tidal range is about 4 feet.

The entrance channel is provided with adequate aids to navigation and its centre line is well defined by leading lights visible far out at sea.

The kidney shaped harbour extends to the southwest for a little more than a mile from the western end of The Narrows, and is from about four to two cables wide. Its compact area is secure and convenient and provides good anchorage with excellent holding ground. The only siltation area is at the mouth of Waterford River at the west end of the harbour where maintenance dredging is carried out.

Tidal currents, both within the harbour and in The Narrows, cause few difficulties. Fog is a serious hazard, especially between April and September when there may be up to 14 days of fog in any given month. During these periods the pilots will not bring in a ship at night.

The major navigational difficulty is the entrance channel where there is little room for large vessels to meet and pass with safety in the narrowest section. The pilots adopt the practice of avoiding such meetings, usually by short delays, and their example is followed by the regular traders who do not employ pilots. The management of Canadian National Railways notifies the pilot station of the expected times of arrival and departure of their vessels. These precautions have worked so well that there has been no collision in The Narrows since at least 1956.

The narrow confines of the harbour cause a serious traffic problem when a large number of fishing vessels arrive either to take refuge from hurricanes or to call for supplies. Since there are insufficient berths, a large number must either anchor or keep under way in the harbour, thus causing congestion and many movages. When the harbour was a naval base during World War II the naval authorities were obliged to resort to compulsory pilotage in order to resolve the problems that resulted from a large number of controlled ship movements and to lessen collisions and accidents. In addition to the 12 civilian pilots on strength, the Navy appointed four naval docking pilots who came under the direction of the Captain of the Port. The Navy also instituted traffic control through The Narrows by installing a system of lights which showed when the channel was clear.

In 1963, there was only one small commercial tug available. When a number of assisting vessels are required, e.g., a disabled ship entering for refuge, the pilots use other available vessels, including a ferry, with a pilot on board each one and all working as a team.

Since 1963, the Department of Public Works has conducted a general programme to clear the harbour of obstructions. In 1963, the wreck of the sunken vessel *Edward Suzanne* was removed as well as the remnants of the trot mooring system and miscellaneous *débris*. In addition, the entrance channel was enlarged and deepened to 35 feet by the removal of material in the Merlin Rock area. Maintenance dredging has been carried out regularly especially in the vicinity of King's Wharf, R.C.N. Wharf, C.O.T.C. Wharf and the C.N.R. drydock (Ex. 1463(w)).

(1) MARITIME AND PILOTAGE TRAFFIC

Maritime traffic can be divided into three distinct categories:

- (a) ocean-going and coastal vessels carrying the imports and exports of St. John's and adjacent localities;
- (b) foreign vessels engaged in fishing on the Grand Banks and in Greenland waters which call for supplies, repairs or refuge;
- (c) disabled vessels of all types, ranging from cargo ships to fishing vessels, which call in appreciable numbers. St. John's is the most easterly North American port in the Atlantic with repair facilities.

Although shipping statistics do not segregate traffic in these categories, the data available are sufficiently clear with regard to (a) and (b) but information on (c) is lacking.

Because of the many changes in the administration of the port and the pilotage service during the last twenty years, consistent comparative records are not available. The following table is compiled from information provided by the National Harbours Board since it became responsible for the port, by the Dominion Bureau of Statistics and by the Pilotage Authority. The National Harbours Board's statistics show all arrivals, those from Dominion Bureau of Statistics show only the number of arrivals of vessels of 250 NRT and over and the pilotage figures show the number of ships that paid pilotage dues whether they entered the port or not. These different factors account for the differences in numbers and in the average net tonnage of vessels in each category.

Year	N.H.B. Statistics (Ex. 479)		D.B.S. Statistics of Vessels of 250 NRT and over (Ex. 1483)		Pilotage Statistics Ships Paying Dues (Ex 250)	
	No. of Ships	Average NRT	No. of Ships	Average NRT	No. of Ships	Average NRT
1958.....	n/a	n/a	1,134	811.6	1,023	1,088.5
1959.....	n/a	n/a	1,033	1,120.3	989	1,193.5
1960.....	n/a	n/a	969	1,225.0	991	1,179.2
1961.....	n/a	n/a	930	1,147.6	1,003	1,016.3
1962.....	n/a	n/a	895	1,326.6	990	1,120.6
1963.....	n/a	n/a	491	1,577.3	1,024	958.3
1964.....	n/a	n/a	466	1,807.6	1,214	924.7
1965.....	1,851	776.5	487	1,664.3	1,359	935.1
1966.....	1,928	933.3	614	1,805.0	1,513	1,083.0
1967.....	2,019	856.3	601	1,698.7	1,590	1,027.3

A comparison of the above figures indicates (a) the majority of the above vessels are under 250 NRT, (b) many vessels do not use the services of a pilot, (c) most of the vessels piloted and/or paying pilotage dues are fishing vessels under 250 NRT.

Most *general traffic* consists of cargo ships up to 3,500 GRT, passenger and cargo vessels and a substantial number of oil tankers. The largest vessel to call at St. John's as of 1963 was an oil tanker of 17,000 GRT.

The Canadian National Railways vessels call regularly; some are engaged exclusively in provincial trade. In recent years, the Sydney ferry has operated in the winter months to St. John's rather than to Port aux Basques. These vessels generally do not take pilots but have been paying dues which amounted in pilotage revenues for the years 1965, 1966 and 1967 to \$3,186.62, \$8,084.00 and \$12,525.00 respectively (Ex. 402).

In 1963, Furness Withy & Co. Ltd. operated from St. John's three cargo type freighters of about 4,000 tons gross (about 1,800 NRT) every two weeks which amounted to 70 arrivals a year. These vessels always took pilots. Its Manager, Mr. Maurice G. Devine, stated that the company was highly satisfied with the efficiency of the service and the pilots' cooperation.

Blue Peter Steamships Limited operated from St. John's four ships they owned averaging 300 NRT, and during the summer two or three chartered vessels as well. These vessels account for about 100 to 150 arrivals per year. The Masters of the company's vessels do not employ pilots although the company has left them at liberty to do so since they are required to pay pilotage dues. They are thoroughly familiar with the harbour and have never suffered a casualty there.

Each year during the month of May a group of Portuguese handline *fishing vessels*, known as the *White Fleet*, call for provisions, fuel, stores, etc., before proceeding to Greenland waters. They account for the May traffic peak.

However, the heaviest concentration of fishing vessels occurs in September and October when they seek shelter as a result of hurricane warnings. There may be over 80 of them in the harbour at one time.

Next to the *White Fleet*, the Spanish vessels are the most numerous. They operate in pairs, one with a fishing Master and the other a sailing Master.

In this group there are also larger vessels which call occasionally for fuel, supplies or repairs, e.g., "fish factory ships" averaging 3,000 gross tons, trawlers between 200 and 1,700 gross tons, beam trawlers between 1,200 and 1,600 gross tons, and Russian water tankers.

When fishing vessels arrive in groups a pilot boards the first vessel to reach the entrance channel and leads them into the harbour in groups of 2 to 12. There are not enough pilots to attend to each vessel individually, despite the fact that the off-duty watch comes to assist. Instructions about anchorages and berths are drawn up by the Harbour Master and passed by radio. Since all vessels can not berth at once, some keep under way until allotted a berth. A full pilotage charge is made for each fishing vessel conducted in, except for the pilot boat charge which is made only once per group of vessels piloted.

This fishing vessel traffic accounts for about 25% of pilotage revenue.

Maritime traffic varies greatly from year to year and from month to month. The graph Appendix A(1) (p. 568) shows these variations on a monthly basis for the period 1961-1964, both in number of ships and aggregate NRT. The graph Appendix B(1) (p. 570) shows for the same period on a monthly basis the per cent increase or decrease both in number of vessels and average NRT per vessel. They show that pilotage traffic is irregularly spread throughout the twelve months but there is a constant pattern from year to year. Traffic rises to peaks in the late spring and late summer or early fall and drops to its lowest point during the winter months and August. The main cause of this variation is the arrival of the fishing fleets. The late summer peak is dependent upon the intensity of the hurricane season. If there are no warnings, the fishing vessels do not visit St. John's. Winter traffic is also dependent upon the ice situation in the Gulf which occasionally blocks traffic completely.

The legal situation with regard to the compulsory payment system both prior to and after January 1, 1965, is explained on pp. 522 and ff. The factual situation is that the Pilotage Authority has continued to apply the 1946 regulations, as amended in 1957, as if they had not been abrogated (Ex. 240).

The pilotage statistics do not contain any information about the number of ships paying dues without employing pilots. The Harbour Master's function as Secretary to the Pilotage Authority is only a part time occupation. He exercises no control over the provision of services and performs only clerical duties, mainly limited to bookkeeping. His statistics are in terms of bills paid and show little about the actual pilotage situation.

In order to obtain more details, the Commission analyzed the *Pilots' Diary* for the year 1962. There was a substantial difference between their figures and the Authority's statistics contained in the official annual report. The *Pilots' Diary* showed 1,070 arrivals and 390 movages (compared to 990 arrivals and 387 movages shown on the annual report). Vessels accounting for 156 arrivals did not employ pilots although dues were paid, and 133 of the movages were in the same category—135 of the 1,070 arrivals were ships under 250 NRT (Ex. 1462(s)).

On the basis of assignments, the St. John's pilots' log book again indicates different figures for the year 1962 (Ex. 1462(s)).

	Arrivals (inward trip)	Departures (outward trip)	Movages	Total Assignments
With pilots.....	861	763	258	1,882
Without pilots.....	155	158	115	428
Total.....	1,016	921	373	2,310

The discrepancy between inward and outward trips is partly covered by off-harbour services (vide p. 546) where each ship is counted as an inward trip, i.e., one-half the total pilotage charge. It is also partly covered by small ships which call at St. John's frequently and take a pilot inward but not outward, although they pay dues. It was pointed out that this practice became more pronounced after the introduction of the \$10 pilot boat charge in 1960 (Ex. 1462(s)).

2. ORGANIZATION

The District has retained the pilotage type of organization provided by the 1946 pre-Confederation statute. The function of the Pilotage Authority is limited to licensing, rate-fixing and related matters, while the provision of services and the collection and distribution of pilotage revenue are left to the pilots. The small amount of administration which devolves on the Pilotage Authority is attended to by the Secretary, to which post the Pilot Commissioners reappointed their former Secretary and Harbour Master, Capt. H. W. Stone, who is still employed by the National Harbours Board as Harbour Master.

The Pilotage Authority remains a Commission of three members. As seen earlier, on December 23, 1964, the three former Harbour and Pilotage Commissioners in office were reappointed as Pilot Commissioners under Part VI of the Canada Shipping Act.

The three members of the present Pilotage Commission are all connected with trade and shipping and all well qualified for the function. Mr. James C. Grieve is Director of a shipping firm, Mr. Maurice G. Devine is the Manager of Furness Withy & Co. Ltd. and Capt. J. Whelan is a retired Master Mariner, Ship Surveyor and Nautical Assessor. The Secretary, Capt. H. W. Stone, is also a Master Mariner.

The first administrative problem, and also the most important, was created by the Union of Newfoundland with Canada. The long delay before the proclamation of Part VI of the Canada Shipping Act in Newfoundland is said to have been largely due to the fact that port and pilotage administration was completely integrated. The Federal Government had to decide how to administer the port before dealing with pilotage organization.

At the time of the Union (1949), the Department of Transport allowed the former Examiner for Masters and Mates to continue to act as Harbour Master and Secretary of the Commission. Later, the Department appointed a new Examiner for Masters and Mates who also fulfilled the duties of Harbour Master and Supervisor of Pilots although he was already on its salary list. This plurality of offices brought the Department more closely into pilotage matters in St. John's than is usually the case where pilotage is

administered by a local Commission. The Department of Transport endeavoured to assist the Pilotage Commission by offering advice on pilotage matters but it had no control over the District and merely acted as an intermediary between the Pilotage Authority and the Governor in Council when the Commission wished to have amendments to its By-law sanctioned by Order in Council.

Preparations were made to reorganize both the port and the pilotage service in anticipation of the proclamation of Part VI C.S.A. During the course of discussions between the Harbour and Pilot Commissioners, the pilots and officers of the Department of Transport, the impression arose that St. John's would become a Pilotage District with the Minister of Transport as Authority. In the course of the evidence given before this Commission the pilots stated that they would prefer to be under a local Commission, because they would rather have local men dealing with pilotage matters. This came as a surprise to the Department of Transport's officials who claimed that they were not aware that the pilots did not wish to come under the authority of the Minister of Transport. In fact, they thought there was full agreement between them and the pilots on the matter. It was pointed out that if the Minister were Pilotage Authority it would be simpler to provide pilot vessels, offices and staff for the District. However, no doubt on account of local opposition, the Department of Transport abandoned the idea and, as seen above, when the District was reorganized under Part VI C.S.A. the Harbour and Pilotage Commissioners were merely reconfirmed in their pilotage functions.

The Department of Transport endeavoured to arrange for a new By-law to be ready for approval as soon as Part VI was proclaimed and drafts were submitted to the Harbour and Pilotage Commissioners for consideration. At the same time, they were asked if they would accept an appointment as the new Pilotage Commissioners. No agreement was reached on the proposed regulations, with the result that when sec. 3 of the 1964 Act and Part VI C.S.A. were proclaimed the new District was left without any legal regulations. It is incredible that this situation still prevails four years later (vide p. 524).

In 1958, the pilots, following the example of their colleagues in other main Districts, appointed a Pilots' Committee, although there was no provision for it in the regulations at the time. Its three members are elected annually by the general meeting of the pilots. Committee meetings are informal. Its function is to protect and promote the interests of the pilots both as individuals and as a group.

The Committee did not assume the functions of the two Master Pilots whom the pilots continue to elect in turn annually under sec. 4 of the 1946 By-law, no doubt one for each watch. They are not necessarily members of the Pilots' Committee. Their rôle is to supervise the provision of services and to collect and share pilotage dues and other revenue of the pilots as a group, e.g., charges for linesmen's services.

The opinions expressed before this Commission on *compulsory payment of dues or compulsory pilotage* are varied and based on different premises.

The consensus of opinion was that an efficient, reliable pilotage service should be available and all expressed their satisfaction with the competence and cooperation of the St. John's pilots.

Capt. John J. Whelan, a member of the Pilotage Commission and a mariner of great experience, advocated that a pilotage service should be maintained for the safety of ships and harbour installations. This opinion was shared by Mr. M. G. Devine, the Manager of Furness Withy & Co. Ltd.

With regard to compulsory pilotage, regular traders such as Canadian National Railways and Imperial Oil Limited urged that regular traders should be fully exempted. Blue Peter Steamships Ltd. urged that the Masters of their four company-owned vessels be granted pilotage certificates.

The St. John's Harbour and Pilotage Commission did not view favourably the possibility of exempting foreign fishing vessels (even those of small size) but the reasons advanced—traffic control, protection of public and private property and loss of revenue—are not grounds to warrant the imposition of compulsory pilotage. They pointed out that there would be chaos in the harbour if the fishing vessels were not guided by the pilots but this is not a pilotage problem: it is a question of traffic control by the Port Authority which should be resolved by other means than licensing an unnecessary number of pilots to meet occasional brief demands. The possible danger to navigation or damage to vessels and port installations is minimal and, if damages are incurred, the offended parties have adequate legal means at their disposal to protect their interests. It should be the responsibility of Masters or agents of small fishing vessels to employ a pilot if they find it to their benefit to do so. If a small vessel foundered in the harbour or in the Narrows, there would be no serious interference with navigation. Loss of revenue is not a reason for imposing compulsory pilotage directly or indirectly. As already pointed out, one unjustified consequence is the creation of an artificial demand for pilotage resulting in too large an establishment and a general weakening of the whole system (Part I, General Recommendation No. 22).

3. PILOTS

The pilots are not grouped in any association but most of them are members, on an individual basis, of the Canadian Merchant Service Guild. They are represented as a group by their unofficial Pilots' Committee.

At present, in view of the absence of District regulations made under sec. 329 C.S.A., there are neither prerequisites, qualifications nor licensing procedure. No pilots have been appointed since Part VI C.S.A. came into force. Although the former regulations contained little in this regard except that candidates were to satisfy the Examiner for Masters and Mates of their qualifications to act as a pilot (p. 529), even this simple requirement was apparently never met by the former Port and Pilotage Authority. The evidence before this Commission is to the effect that none of the pilots on strength had ever been examined by the Examiner for Masters and Mates or passed an examination of any sort and that the Pilotage Commission's choice was based on the candidate's record plus an occasional interview by the Commission or the Secretary.

Nevertheless, this informal process has produced highly qualified, responsible pilots, doubtless because in Newfoundland there is an extensive coastal trade which develops experienced candidates.

Pilots were, in fact, recruited from qualified mariners with actual experience in coastal navigation and harbour waters. The average admission age was 35. No apprenticeship or probationary period was required by the former regulations. However, the custom has been to allow newly licensed pilots sufficient time to become adjusted during an unofficial probationary period. They were required to accompany experienced pilots on assignments, if necessary for two or three months until they felt competent to pilot on their own, usually starting with smaller ships. During this probationary period they received the same remuneration as the other pilots.

The eight pilots on strength at the time of the Commission's hearing in 1963 had considerable sea experience and all possessed a Master's certificate, either Foreign-going or Home Trade.

In recent years there have been no requests to increase the number of pilots. In fact, in 1960 and 1962 they were reduced from ten to eight by normal wastage at the pilots' own request. The pilots were of the opinion that eight pilots were sufficient to meet the demand at that time, including coastal pilotage. Their request was accepted by the Pilotage Authority with the reservation that, if there were any general complaints of lack of pilotage services, their number would be increased. It does not appear that this matter received further study by the Pilotage Authority.

The latest By-law (now abrogated) contained no provision for leave of absence but the pilots arranged among themselves for periods of absence from duty. In addition to off-duty periods they took two weeks' unofficial annual leave with only one being absent at any one time. The Secretary was

advised of their leave schedule and informed when a pilot left the province. In actual fact, this holiday extended to 25 consecutive days including off-duty periods.

The pilots follow a watch system of five days on and five days off. During their days off the pilots are free to do as they please provided they can be reached and recalled in case of emergency. For instance, the off-duty watch is generally called when the fishing vessels arrive in groups. The pilots take advantage of off-duty periods to perform coastal pilotage.

Under this system each pilot is off duty for a little more than six months per year, i.e., about 190 days, not including some idle days while on duty watch. Such an extensive aggregate period of leave can only indicate that there are too many pilots for the present workload.

Nor did the same By-law, which was devised for a free enterprise system, provide for sick leave, since, according to the regulations, remuneration was not based on availability. The pilots, having unofficially adopted a pooling system to share the net earnings equally, continued such remuneration during periods of absence due to illness or injury. It is assumed that an exception is made when a pilot's absence is due to an injury which is being compensated under the Workmen's Compensation legislation, a situation which has occurred three times (p. 554).

Between 1960 and 1963, the Harbour and Pilotage Commission had only one disciplinary case. This occurred in July, 1961, when a pilot's licence was withdrawn on the ground that he had consumed intoxicating liquor regularly and to such an extent that his duties were not performed satisfactorily.

The case was dealt with in an informal manner but the pilot in question was given the opportunity to defend himself. He had previously appeared many times before the Commission on charges of drinking while on duty and had admitted committing the offences. He was first admonished but after several recurrences the Commission consulted the Pilots' Committee proposing to suspend his licence for six months without pay and review the case later to determine whether he should be reinstated or not. By a majority decision the pilots approved the proposed action but four of them advocated immediate dismissal. The Commission then imposed the six months' suspension of which the pilot was advised by letter. This award was later changed to withdrawal of his licence following a unanimous decision of the three Commissioners.

However, for the same reasons that are developed in Part I, C.9, regarding Part VI C.S.A., it appears that the local Commission had no power under the governing Newfoundland statute to act as a tribunal. Sec. 30 of the 1946 Newfoundland Act required that the trial be held before a stipendiary magistrate.

In the period 1960-1967, only two shipping casualties involving a pilot are reported. On August 26, 1963, M.V. *Galatia* dragged both anchors

when berthing in a strong wind. Slight damage was done to the tug. On December 10, 1966, an outward bound vessel struck Prosser Rock, situated off the western entrance to The Narrows and indicated by a light buoy. This accident occurred well inside District waters and at a point where the navigational risk is greatest. It is reported that the pilot had left the ship with the Master's consent since his services had been required for unberthing only (Ex. 250).

4. PILOTAGE OPERATIONS

(1) PILOT BOARDING STATION AND PILOT STATION

There is no official pilot boarding station. The pilots normally embark not more than two miles from the harbour entrance. In many cases they are not employed for outward voyages and at times, as seen earlier, their services are limited to unberthing. On such occasions, the pilots may be disembarked well inside the harbour with the Master's consent. They normally disembark before passing the Heads or even earlier if a heavy swell prevails. In adverse weather they sometimes have to board in Bay Bulls, which can easily be entered even by a stranger. Bay Bulls is situated 18 miles from St. John's. The necessary transportation arrangements, including hiring a local boat, are made by the agents concerned who then assume the extra cost.

The pilot station is located in the Department of Public Works Building on Queen's Wharf well inside the harbour. The pilots claim that the location is excellent because of its alignment with the range lights indicating the centre line of the approach channel from the sea, and recommended that it should not be changed. From this location the pilots claim they can observe ships approaching from seaward and objected to the station being moved to a site where this view could not be obtained. However, their argument is not particularly valid because there is a very limited arc of sight through The Narrows and a visual watch from the base has only a limited value. Indeed, arrangements were made for the lighthouse keeper at Fort Amherst, which is situated on high ground overlooking the entrance to the harbour and manned 24 hours a day, to report to the pilots vessels sighted off the harbour entrance.

However, it was claimed that a visual watch is necessary, particularly for the fishing vessels whose R.T. equipment is out of order. There had been some discussion about allocating Fort Amherst to the pilots as an observation post, but apparently nothing came of it.

The pilot station is equipped with a VHF transmitter-receiver radio and a land telephone both supplied free of charge by the Department of Transport. There is also a Hallicrafter radio receiver tuned to 2182 kilocycles, supplied and owned by the pilots. The station includes sleeping quarters for pilots on duty watch. The typewriter, heating system and other similar equipment are supplied by the Pilot Commissioners, while the bedding, linen,

food, cooking equipment and cutlery are furnished by the pilots themselves. Office space is also made available for administrative purposes.

The station was in a rather dilapidated state in 1963 and it appeared that the Government did not plan to undertake any major repairs to the building which belonged to the Department of Public Works. This situation prompted the recommendation made both by the Pilotage Authority and the pilots that a modern station be erected for the pilots on the same site. Their request was not granted (Ex. 1463(h)).

It would appear that the real question is whether there should be a pilot station at all.

COMMENTS

It is considered that a pilot station provided with sleeping quarters where the pilots on duty keep a constant watch is an anachronism.

The city of St. John's is not large and there is no reason why a system of despatching the pilots from their homes (which is successfully used in all major Districts) should not be adopted here. If a visual watch must be maintained, it should be carried out from an effective base such as Fort Amherst and by persons other than the pilots who should not have their workload unnecessarily increased by such duties. Nor is there any good reason why sleeping quarters should be made available for the pilots when they can all be reached at their homes by telephone and be despatched from them at short notice.

All that is required is a pilotage office suitable for administering the District and the service.

(2) PILOT VESSEL SERVICE

When the Commission sat in St. John's in 1963 there were two pilot vessels in service: *Canada Pilot No. 1*, built in 1953, and *Canada Pilot No. 2*, built in 1948. They were both wooden vessels sheathed with green-heart, equipped with radiotelephone and licensed by the Canadian Steamship Inspection Service to carry five passengers. They were manned and operated by the Department of Transport (vide p. 525).

They each required a boat crew of two, one of whom was certificated, on duty 24 hours a day at the pilot station. Both vessels were kept ready for service but could not be used at the same time unless one of the two off-duty crew was called out. A total of six were employed as boat's crew, working two at a time, 24 hours on and 48 hours off. A pilot vessel engaged on duty maintained constant radio communication with the pilot station.

These vessels were the responsibility of the local D.O.T. representative, the Examiner for Masters and Mates. He expressed the opinion that they were both old and should be replaced, supporting the Pilot Commissioners and the pilots' recommendation to that effect.

Replacement became necessary when *Canada Pilot No. 2* sank January 1, 1964. The vessel was returning to the wharf through thin ice and sank when the ice pierced the sides. The Sydney pilot vessel, *Canada Pilot No. 3*, was a temporary replacement which proved unsatisfactory. The Department submitted specifications for a new pilot vessel which the pilots found adequate. The wreck of *Canada Pilot No. 2* was sold by the Department for the sum of \$1,000 which was deposited in the District Pilotage Fund.

Before these pilot vessels were taken over by the Department of Transport they belonged to the Pilotage Authority, who transferred them to the Crown for \$1 each. At the same time, the outstanding pilot vessel accounts, including a loan from the Government of Newfoundland, were assumed by the Department of Transport.

A new pilot vessel, also named *Canada Pilot No. 2*, was built at the C.N. Dockyard at St. John's and entered service on completion in July, 1967. Its principal particulars are length overall 51'4½", beam 13'6", extreme draught 5'9", speed on trials 9.5 knots (Ex. 1463(i)).

The former Sydney pilot vessel is now stationed at St. John's for relief purposes. Both vessels are fitted with FM/AM and VHF/FM radiotelephones and radar. *Canada Pilot No. 1* was declared surplus and turned over to Crown Assets Disposal Corporation for sale in September, 1967.

The personnel now required for manning these pilot vessels number nine, one Supervisor and eight crew. Two are employed at a time on shifts of 24 hours on and 72 hours off (Ex. 1463(i)).

In 1965, the total cost of the pilot vessel service was, in round figures, \$62,000, 34 per cent of which was met by shipping through the \$10 pilot boat charge, and the remaining operational deficit of 66 per cent, \$41,000, was assumed by the Crown as an indirect subsidy to the local pilotage service (vide Part I, p. 679). Operating expenses, not counting the capital expenditure for the new pilot vessel, have increased substantially since then.

The pilot vessels are also used for other purposes. They are required to participate in search and rescue operations when called upon. Occasionally when an emergency occurs, they are used by the pilots to run lines when berthing, although normally a local boat is used for that purpose. They are also used to carry persons to or from vessels that do not enter the harbour—a common occurrence being the transfer of the sick or injured. They also transport coastal pilots (p. 550).

COMMENTS

Every advantage should be taken of the availability of the pilot vessel for employment in the harbour, but at an adequate service rate, provided such use does not interfere with the pilot vessel service. Service rates should

be established by the Department of Transport through the Financial Administration Act. The pilot vessel service is very costly to maintain and every reasonable effort should be made to reduce its operating deficit.

(3) DESPATCHING

Despatching is arranged by the pilots themselves. They are divided into two watches, each working alternately five days on and five days off. When the four pilots on the duty watch are not performing pilotage, they stand by at the pilot station and are expected to remain and sleep there throughout the five-day period.

Shipping agents who require a pilot generally contact the pilot station directly but vessels at sea sometimes send messages to the Department of Transport or to the Harbour Master. These messages are then relayed to the pilots for action.

There is no regulation or publication specifying how much notice must be given for a pilot requirement. Two or three hours' notice is sometimes given, but occasionally, as in the case of vessels unable to give their ETA by radio, there is no notice at all, in which event the pilot leaves the pilot station immediately the vessel is sighted off the harbour entrance. Under present arrangements, only short notice is required for an inward trip since there is always a pilot available at the station, but if pilots are to be despatched from their homes a suitable notice period would have to be fixed.

The present practice is for the pilot who has piloted a ship inward to pilot her outward, unless his services are dispensed with or the outward trip does not occur during his watch period.

COMMENTS

Although the despatching system works satisfactorily and no complaints were received, it is considered an anachronism and an undue imposition on the pilots. It also involves the expense of maintaining a pilot station which could otherwise be dispensed with.

In this day and age it is absurd for pilots to depend on sighting ships visually when modern radio communications are available, and in a harbour like St. John's there is no reason why pilots can not be despatched from their homes. Alternative and more up-to-date means should be employed to communicate visual sightings, e.g., a constant watch maintained at Fort Amherst lighthouse, or a land-based radar, which would prove even more effective since fog would not interfere with it.

There is also no reason why the pilots should be required to handle their own despatching. This should be effected by the District supporting staff under the direction of the Secretary. Here, as in other Districts, advantage should be taken of the constant availability of the pilot vessel crew (p. 248).

(4) WORKLOAD

For lack of specific data, the actual workload of the pilots can be obtained in only a general way from statistics kept for other purposes.

The pilots themselves kept certain records, not to establish their workload but to compute pilotage bills. Hence, the statistical information that may be drawn from them does not show the number of trips, because for the purpose of billing non-exempt ships only arrivals are significant, whether or not a pilot was employed.

The "off-harbour service" consists of making a pilot vessel available to transport persons to or from ships which do not enter the confined waters of the District but remain in the open sea. The only service rendered is transportation which is totally foreign to pilotage except when a coastal pilot is transported, in which case it is not a function of the St. John's Pilotage District. In each instance, however, a St. John's pilot travels on board the pilot vessel, the service is counted as an arrival in pilotage statistics and a half pilotage charge is made, i.e., an inward trip charge.

This is obviously a relic from the past when the pilots were port employees and operated the only reliable, constantly available harbour transportation service. In these circumstances, they were required as occasion demanded to perform such transportation services as operators of the pilot vessels. Now that Department of Transport personnel operate the pilot vessels, a St. John's pilot should not be on board the pilot vessel unless his services have been requested for outport or coastal pilotage, or for other pilotage services.

The irregularity of the situation must have been realized since the pilotage tariff never listed a charge for such a service (p. 556), although it should have been provided for in the harbour tariff. It is reported that during 1960 to 1964 inclusive these off-harbour services accounted for 26, 23, 56, 46 and 12 of the reported pilotage arrivals.

Even in the pilotage statistics the number of arrivals gives an unreliable indication of the pilots' workload since fishing vessels are often piloted in groups of from 2 to 12. Hence, only one pilot is employed for each group or pilotage unit although the record shows that each fishing vessel is counted as an arrival.

Furthermore, a number of ships dispense with the pilot immediately after unberthing or do not employ one for outward trips.

In addition, the aggregate numbers shown in the various sources of information regarding the same item do not agree (pp. 534 & ff.). In its first annual report after taking over St. John's Harbour in 1965, the National Harbours Board refrained from making a comparison with the previous Port Authority's statistics by saying (Ex. 479):

"Due to the dissimilarity of records prior to 1965, it is difficult to establish with any degree of accuracy comparative statistics for the data collected by the Board during the period January 1—December 31, 1965".

For statistics showing the number of arrivals and the average NRT per ship based on statistics from the National Harbours Board, D.B.S. statistics of vessels of 250 NRT and over and pilotage statistics, reference is made to the table p. 534.

Re the distribution of work throughout the year, two main factors should be considered:

- (a) the number of assignments at any given period;
- (b) the nature of pilotage traffic at that time.

Traffic is very unevenly distributed from month to month. There are two lows: the longest and most significant during the winter months from November to April inclusive with the lowest point in March or April, and a lesser one in mid-summer (vide traffic graphs Appendix A(1)).

The large increases in the other months are mainly due to visits by foreign fishing fleets as shown by the significant drops in the average tonnage of ships corresponding with the peaks in number of vessels. For instance, while in January, 1961, there were 45 ships piloted with an average NRT of 1,698.6 tons per ship, the peak month for that year was September with 181 ships with an average NRT of only 678.6 tons per ship. This fact is self-evident from the graphs (App. B(1)) showing in percentage the variation per month in the number of ships and in average NRT.

This workload is unevenly shared by the pilots because of their division into two watches, a system which they have retained from the distant past when they worked as companies in pilot vessels that had to keep cruising at the seaward limit of the District. The result is that only four pilots attend to all pilotage during their five-day duty watch. Since assignments vary greatly from one period to another, there are wide differences in the yearly aggregate performed by each pilot. For instance, the records show that in 1962 the eight pilots performed 290, 227, 221, 219, 217, 213, 201 and 171 assignments respectively, making a grand total of 1,759. However, it should also be remembered that these figures refer to the number of ships and not to the actual number of assignments which would be lower, since fishing vessels are conducted in groups by one pilot.

The available records contain no details of the time involved in the performance of pilotage duties. Source forms merely identify the type of service rendered and list tonnages. Hence, the only available information is oral evidence which lacks precision. However, judging by the size of the harbour and its short distance from or to the open sea, normal pilotage trips must be of short duration. Unfortunately, the lack of data as to time involved prevents even a rough appraisal of the incidence of longer trips.

According to the testimony received, the breakdown of time involved in the performance of pilotage duties is as follows:

- (a) Travelling time in the pilot vessel between the pilot station and embarking off the harbour entrance varies from thirty minutes,

under normal conditions, up to three or four hours when the vessel is delayed or when the weather is adverse.

- (b) Inward trips from the time boarded to the completion of berthing normally take about one hour, but in the case of large ships may take from two to three hours by the time the vessel is finally berthed.
- (c) Movages may take half an hour to two hours from the time the pilot leaves the station until he returns, depending on the traffic conditions in the harbour, the size of the vessels, whether a tug is used, the number of mooring lines, prevailing weather conditions and the location of the berth(s).
- (d) For outward pilotage, assuming the ship is ready to sail, it takes approximately half an hour from the time the pilot boards the vessel until he disembarks, i.e., if he disembarks outside the harbour and not well inside, as the evidence indicates the practice to be.
- (e) Travelling time from the seaward boarding area to the pilot station takes from ten to fifteen minutes in the pilot vessel.

One pilot with seven years' experience stated that the greatest number of assignments which he performed in a 24-hour period was seven. This occurred during the "hurricane season" of 1958 or 1959. During the same period, it was said that some of the pilots performed possibly as many as ten assignments, but on the average the maximum number of assignments in a 24-hour period was three, whether they involved outward or inward pilotage or movages. For example, on May 23, 1962, the busiest day of the busiest month for that year, one pilot did three assignments, i.e., two outward pilotages and one inward pilotage. The two outward pilotages together required approximately one hour and a half, and the inward one an hour and a half, a total of three hours altogether.

In addition, the pilots perform other duties both connected and unconnected with pilotage, e.g.,

- (a) When the pilots of the duty watch are on standby at the station they provide agents and ship owners with a shipping information service by reporting on vessel movements in and out of the harbour. It was stated that this is not time consuming and usually amounts to no more than a few telephone calls.
- (b) They arrange for line handling in accordance with long established practice.
- (c) They collect pilotage dues and linesmen's fees.
- (d) They perform coastal pilotage in their off-duty periods, provided their services are not required for in-District pilotage (p. 550).

Line Handling

For over 50 years the pilots, as a group, have been providing a line handling service when requested by the agents. It is not compulsory nor is there any set charge. The usual rates depend on the length of the ship. In 1963, the charge for a ship of 200 to 300 feet was \$20; \$30 for a ship of 300 to 400 feet and so on proportionately.

The pilots supply from two to eight or ten men, depending upon the size of the vessel and the location of her berth.

The pilots hire and pay the linesmen. They live near the waterfront and can be reached by telephone at any time. When the pilots owned and operated the pilot vessels they carried the lines in them but now they hire a private boat for that purpose and use a pilot vessel only in case of emergency.

Since this is a service provided by the pilots as a group, the fees for line handling are collected with the pilotage dues. The Master Pilot pays the linesmen and the boat owner, and shares the remainder of the fees equally among all the pilots.

COMMENTS

It is obvious that in 1962 eight pilots were in excess of the pilotage demand, since the same number now readily handle many more assignments.

Although the few incomplete statistics available show that the demand for pilotage has increased substantially, the present workload could clearly be attended to by a smaller number of pilots. In fact, here as elsewhere, there should be no more pilots on strength than those required during regular peaks of considerable duration. The service should be organized to ensure that the pilots are not engaged in other occupations and that the best advantage is taken of their availability. In addition to instituting the basic reforms that have proved beneficial in other Districts, a detailed study should be made of the nature and demand for pilotage and the service organization amended as necessary.

The Harbour and Pilot Commissioners recommended in their brief, *inter alia*, parity of treatment and remuneration for the St. John's pilots with those of the other main Atlantic Coast Districts.

This would be a reasonable request if duties, responsibilities and working conditions were similar but this is not the case, e.g., pilotage problems in St. John's can not be compared with those in Saint John, N.B., and pilotage trips in St. John's are shorter and less complicated than in Halifax or Sydney. Each District is an individual case and comparisons are likely to be misleading.

Parity of remunertaion with other ports has been attained in recent years because more ships are paying pilotage dues at St. John's. This may not be true in future if, as recommended by this Commission, the compulsory payment of dues is abolished and replaced where indicated by

compulsory pilotage based on the safety of navigation (General Recommendations Nos. 22 and 23, Part I, pp. 532 and ff.).

An increase in rates may reduce traffic by making St. John's less competitive as a port for supplies, repairs and refuge.

If the present status of the pilots is retained, their income could be increased by reducing their number.

The first step in that direction would be to abolish the watch system which allows extensive off-duty periods while maintaining an unnecessarily high reserve of pilots who make no practical contribution to pilotage operations. Five days off out of every ten is unreasonable and clearly indicates that the present workload could easily be attended to by a smaller number of pilots following a more realistic routine. Duty-watches have been advantageously replaced in the Halifax and Sydney Districts by despatching the pilots from their homes according to a regular tour de rôle but also allowing them adequate periods of rest and leave. There is no reason why the same system should not be applied in St. John's.

There is no justification for employing a large number of pilots to perform non-pilotage duties that can be undertaken more economically and efficiently by other persons, e.g., off-harbour services, despatching, harbour traffic control, information service, billing and collecting pilotage dues and linesmen's charges.

Coastal and outport pilotage, which is a completely separate service, should not be a factor in determining the number of pilots required for the St. John's District. In the absence of organized coastal pilotage, there is no objection if such services are occasionally rendered by the St. John's pilots, provided they continue to be available when needed in their home port (vide pp. 578-579).

A realistic attitude should also be taken about the comparatively simple problem of piloting and berthing fishing vessels. As experience indicates, there is no reason why a large number of pilots should be kept solely for the purpose of providing one pilot per fishing vessel at any given time because this would mean increasing substantially even the present number of pilots to meet a situation which occurs only a few days per year. When these vessels arrive in large numbers they should be dealt with as exceptional cases.

- (a) If pilots are not available for all these vessels when they arrive, there is no reason why they should not be kept waiting in the boarding area, observing that St. John's can be entered by such small vessels at any time of the day or state of the tide. Any delays would be short and should be expected and accepted under the circumstances.
- (b) They should be piloted in groups as at present to save time and encouraged to accept the practice by a reduced tariff for each vessel so piloted.

- (c) If fishing vessels decide to proceed inward or outward without a pilot, they should be allowed to do so since their shallow draught does not present a navigational hazard in The Narrows.
- (d) To deal with the brief peaks created by the arrival of fishing vessels, relief pilots with licences limited to the pilotage of such vessels might be called on by the Pilotage Authority.

Compulsory pilotage should not be imposed merely as a means to provide revenue or effect traffic control, but only if dictated by public interest and the safety of navigation.

5. PILOTS' REMUNERATION AND TARIFF

According to the Canada Shipping Act, the pilot is a self-employed free entrepreneur whose remuneration consists of the dues he has personally earned by his services. The Pilotage Authority is authorized to make regulations imposing deductions for the maintenance of a Pilot Fund (subsec. 319(1), 1934 C.S.A.) and toward the payment of duly authorized District operating expenses (sec. 328 C.S.A.). Subsec 329(c) does not apply since the provision of pilot vessel service is no longer the responsibility of the pilots. Regulations may also provide a method of collection by making the dues payable to the Pilotage Authority on behalf of the pilots. Therefore, in the absence of regulations the pilotage dues are payable only to the pilot who has earned them and belong to him in their entirety.

However, fixing the amount of pilotage dues is a subject-matter which belongs exclusively to the regulation-making jurisdiction of the Pilotage Authority. The absence of such regulations renders the whole pilotage organization ineffective because the licensed pilot lacks the legal capacity to fix a price for his services and, therefore, any claim he may make for services rendered can not be enforced in law. This is the present legal situation and it will remain so as long as the Pilotage Authority does not fulfill its mandatory duties.

The pilots were never required to pool their earnings by District regulations. The dues, except the surcharge which under the repealed regulations belonged to the District Expense Fund and the pilot boat charges which belonged to the Receiver General of Canada, were the property of the pilot who earned them and had to be paid directly to him unless the Commission Secretary, i.e., the Harbour Master, was otherwise instructed by the pilot concerned.

In fact, the pilots have grouped themselves in a tacit partnership to provide the required pilotage services and to pool their earnings. As seen earlier, they have devised their own rules for the former and adopted a pooling system to share the latter.

Except for surcharges and pilot boat charges, pilotage dues have never been used to meet the expenses of the District. The only expenses the pilots incurred out of the pool were the \$5 annual renewal fee for their licence, their \$50 compulsory contribution to the Provident Fund and expenses for travelling, charts and books, advertising and, on one occasion, the purchase of a Hallicrafter radio. They found it advisable to advertise their service and the port facilities (availability of bunkers, supplies, repair services) in shipping periodicals such as the British Nautical Magazine and Swedish journals. These expenditures are not reflected in the District financial report and no figures were given by the pilots. Except for the purchase of the radio which is a non-recurring expense, the other expenditures are minimal, e.g., travelling expenses between the pilot station and harbour berths.

The following table indicates for the years 1965, 1966 and 1967 the pilots remuneration from different concepts (Part II, pp. 132 and ff.) The *Aggregate Pilotage Earnings and Pilot's Share of the Cost of District* do not include the cost of the pilot vessel service either to shipping or to the Department of Transport. The table does not cover any year prior to 1965, since at that time pilotage operations were not segregated from those of the port and available reports show wide discrepancies. For information regarding the period 1961-1965, reference is made to the study made by the Commission's accounting consultants appearing as Appendix IX to Part I, pp. 645 and ff.

	1965	1966	1967
Pilots on Strength.....	8	8	8
Aggregate Pilotage Earnings (excluding pilot boat charges).....	\$84,333.91	\$106,321.68	\$109,975.91
Pilot's share of cost of			
District (not including cost of pilot vessel service).....	10,541.74	13,290.21	13,746.99
Pilots' Pool*	81,674.13	99,896.76	102,778.90
Pilot's share in pool†.....	10,209.27	12,487.10	12,847.33
Amounts paid by Pilotage			
Authority on pilot's behalf out of its Expense Fund			
Authority's share to Provident Fund....	50.00	50.00	50.00
Workmen's Compensation Premium.....	159.75	134.59	162.50
Pilot's gross remuneration.....	10,419.02	12,671.69	13,059.83
Pilot's "take home pay"‡.....	10,154.27	12,432.10	12,792.33

*Pilots' Pool consists of the aggregate pilotage earnings collected, less the surcharge which belongs to the Pilotage Authority's own expense fund.

†Pilot's share in the pool corresponds to the actual share of each pilot except for the year 1965 when only seven pilots were fully available; one pilot who retired was not immediately replaced.

‡Pilot's "take-home pay" is the pilot's share in the pool less \$50 for his share of the \$100 contribution to the Provident Fund and less his \$5 annual licence fee; it is prior to Income Tax deduction.

For the years 1958 to 1964, the pilot's individual remuneration is reported to have been as follows (Ex. 243):

Year	No. of Pilots	Gross Remuneration	Net Remuneration
1958.....	10	\$ 7,821.43	\$ 7,766.43
1959.....	10	8,350.00	8,295.00
1960.....	10	7,802.25	7,747.25
1961.....	9	7,286.07	7,231.07
1962.....	8	8,590.83	8,535.83
1963.....	8	8,142.42	8,087.42
1964.....	8	9,189.38	9,134.38

However, the foregoing figures do not present all the revenue the pilots derive from pilotage or related services. As seen earlier, they provide linesmen's services when required and share the profits equally but do not include them in any official reports. In addition, they perform coastal and outport pilotage but the ensuing earnings are not entered in the District revenue and are not shown on any financial report.

Each year since 1958 the Pilotage Authority has effected at source Income Tax deductions from the pilots' pilotage earnings (excluding linesman service and coastal pilotage earnings) as if the pilots were its employees. The Income Tax authorities now consider the trust accounts (Provident Fund) a registered Pension Plan.

Since the pilots were considered self-employed, the most recent District By-law did not provide for sick benefits with pay, half pay or without remuneration as is customary when pooling is in effect. In case of injury caused by accident while on duty the pilots are covered by Workmen's Compensation legislation. However, through a private agreement between the pilots, absences due to other injuries or sickness are ignored and the pilot draws his share of the pool notwithstanding his absence.

It was stated it would be extremely difficult to establish a welfare plan or pension plan because of the small number of pilots and the disparity in their ages.

Offers to Pilots to Become "Prevailing Rate Employees"

The Department of Transport made the St. John's pilots two offers to employ them under the Prevailing Rate Employees Regulations, and several discussions resulted. The main problems were the basis for remuneration, benefits and job evaluation.

In early 1961, a salary of \$600 per month, increased to \$660 per month in May, 1963, was offered (plus pension and other fringe benefits) but was not accepted.

It was stated that the Department was not seeking to place the pilots under the Prevailing Rate Employees Regulations but rather was informing them of the possibilities available to them if they wished to accept. These discussions were related to studies and negotiations before the proclamation of Part VI C.S.A. in Newfoundland (Ex. 1365).

COMMENTS

In their brief the pilots compared their remuneration with the salary received by Masters but the comparison is not valid since the functions, duties and responsibilities are dissimilar. Here, as in other Districts, the criterion is that the salary or target income (depending upon the mode of remuneration adopted) together with fringe benefits should be sufficient to retain the pilots and attract qualified candidates.

For further comments, reference is made to Part I, C.6 and to the Commission's Comments on the status and remuneration of pilots as Crown employees pp. 210-213.

Workmen's Compensation

In an effort to provide social benefits for their pilots, the St. John's Harbour Pilotage Commission, after lengthy negotiations made necessary by their ambiguous status (Part I, p. 82), obtained Workmen's Compensation coverage commencing December 9, 1955 (Ex. 251). For purposes of Workmen's Compensation, the pilots are considered employees of their Pilotage Authority and the full assessment is paid by the Commission out of the Commission's Expense Fund.

The "industry" was described as "Pilotage of ships, including the operation of a pilot boat in and around the waters adjacent to St. John's and all work incidental thereto". A pertinent question here is whether the pilots are covered while performing coastal and outport pilotage.

The records show that compensation was paid for three accidents in recent years. The first occurred Nov. 30, 1961, when a pilot fell against the rail on the forward part of the pilot vessel after disembarking from a ship during rough weather. The second was on Dec. 14, 1961, when a pilot had both feet and ankles injured when climbing the pilot ladder as he boarded a trawler. The pilot vessel rose on a swell and crushed both his feet against the side of the ship. The third was in Feb., 1962, when a pilot fell into the pilot vessel from the side of the ship he was boarding.

Tariff

The Commission has been informed that the pilotage dues currently charged (except for the surcharge which was unofficially increased) are those detailed in the 1957 By-law amendment (sanctioned May 15, 1957, by P.C. 1957-690) and repealed as of Dec. 31, 1964.

The tariff structure is based on a pilotage service integrated with the port organization and with the Authority and the pilots maintaining separate Funds, a system which is not permissible under Part VI C.S.A. The tariff provides for three distinct types of pilotage dues:

- (a) dues that are the remuneration of the pilots and must be paid to them or on their behalf;
- (b) dues that belong to the Pilotage Authority and form part of its operating Expense Fund;
- (c) dues that belong to the Receiver General of Canada, i.e., charges for pilot vessel service provided by the Department of Transport.

The various rates provided are:

- (a) *voyage rate* composed of:
 - (i) a basic rate computed on net tonnage;
 - (ii) an additional charge for disabled ships towed in or out;
 - (iii) a mooring charge for using the trot system;
 - (iv) the surcharge;
 - (v) a 50 per cent reduction in respect of Canadian vessels engaged in fishing or transporting passengers or goods between places in Newfoundland and not carrying goods loaded at, or destined for, a place outside Newfoundland.
- (b) *movage rates* with:
 - (i) a basic rate computed on net tonnage;
 - (ii) an additional charge for the trot system;
 - (iii) the surcharge.
- (c) *special services rates*:
 - (i) trial trips and compass adjusting in the form of a flat rate;
 - (ii) services not otherwise specified in the form of an hourly charge;
 - (iii) the surcharge in both cases.
- (d) *detention*:
 - (i) a charge per hour from the first hour;
 - (ii) the surcharge.
- (e) *pilot boat charge*:
 - (i) a \$10 flat rate (without surcharge) each time the pilot vessel is used.

Observing that the last remnants of the trot system were removed from the harbour bottom in 1963, the special rates for its use are no longer applicable.

In addition, although it was not provided for in the tariff, half a pilotage voyage charge is made when the pilot vessel is used for off-harbour service (p. 546). This is unjustified since no pilotage services are being provided. The fact that the pilot vessel is used does not make such transportation a pilotage service entitling the pilots to receive remuneration.

It is not known when this half pilotage charge was first made but it has not been provided for in any pilotage tariff since 1946 at least. It appears that it had been levied for several years. In an effort to rationalize the practice, the opinion was expressed that it was necessary to engage a pilot for the proper handling of vessels arriving off the entrance of the harbour within the District limits both for their safety and for the protection of persons disembarking. This argument is not valid, first, because the compulsory payment system can not apply since it is neither a pilotage voyage nor a moveage and, second, there is already a charge provided in the By-law which is the "per hour rate" for pilotage services which are not otherwise provided for in the tariff but only if a pilot has specifically been hired by the Master for that purpose.

According to long established practice, the voyage rate is in the form of a scale based on tonnage which provide that small vessels pay a proportionally higher rate than large ones. The present scale rises from a minimum of \$8.40 by \$1.40 per additional 50 tons from 100 to 800 and by 100 tons thereafter with no maximum.

It is considered that there is no reason to discriminate against small vessels and that there are no special factors peculiar to the harbour of St. John's to warrant a proportionally lower charge for large vessels (vide also pp. 232-233). The pilotage voyage rate should be based on a fixed price per ton of maximum gross tonnage with a minimum charge to prevent wasting the pilots' time on small vessels which should be exempt. If, however, vessels still employ a pilot, they should pay an adequate minimum charge.

The former tariff provided special charges in the case of one type of navigation unit, the *disabled vessel in tow*, a fairly common occurrence on account of the port's location near the Atlantic shipping lanes and its proximity to the fishing grounds. The rates provided were full rate for the towing vessel and one and a half rates for the disabled vessel, plus \$15 per additional tug employed to assist. The tariff, however, was deficient because it did not provide for other navigational units (for definition of the term, vide Part I, p. 475) such as a barge or scow being towed, or a vessel not disabled but towed as a dead ship.

In 1957, a detention charge was added in two cases when a pilot is kept on board for reasons beyond the ship's control: stress of weather or non-availability of a berth. Detention was grouped in the tariff provision with services bearing no relationship to detention. The principles for fixing remuneration for services rendered do not apply to the indemnities, including detention (Part I, pp. 201-203). The remuneration for services rendered,

if based on time involved, is to apply from the first minute, which should not be the case with indemnities. The detention charge is liquidated damages for a breach of a pilotage contract and, therefore, the detention provision should apply only when a definite breach of contract has occurred. To establish such a breach, the inherent difficulty of establishing in advance an exact hour of arrival or departure must be taken into consideration. Therefore, a reasonable delay should be allowed and the indemnity should never be applied when the cause of the delay is beyond the ship's control, such as adverse weather or unavailability of a berth (vide also Part I, p. 490; Part II, p. 157).

In practice, according to the evidence and despite the fact that it was not provided for in the tariff, a detention charge is also applied in an altogether different case, i.e., when a pilot has to wait because a ship's departure has been delayed. According to information available, a detention charge is rarely made, e.g., for the year 1959/60 it was applied only once and amounted to \$16.88 (Ex. 238).

The moorage charge is based on tonnage: \$10 if the ship is below 1,000 tons and \$20 if more than 1,000 tons.

For lack of reliable, detailed statistics, it is impossible to establish the incidence of any of these tariff items, except the surcharge on the aggregate pilotage revenues of the District. The District financial reports segregate the surcharge, as they should because its proceeds belong to a separate fund. All the other items, including the half charge for off-harbour services, are entered under two bookkeeping items *Scale fees collected* and *Harbour shifts*. It would appear that the latter comprise only the moorage charges while all the other rate items are included in the former.

For the years 1966 and 1967, the scale fees, shift fees and surcharge amounted respectively to 83.9 per cent, 9.6 per cent and 6.5 per cent in 1966, and in 1967 to 84 per cent, 9.9 per cent and 6.1 per cent of the total pilotage dues received.

6. FINANCIAL ADMINISTRATION

The financial administration of the District is conducted by the Pilot Commissioners as if Part VI C.S.A. had never been made applicable to Newfoundland, and the former structure, practices and procedure have been continued as if the repealed St. John's pilotage legislation were still in force. They continued to maintain a separate fund for expenditures with which they dealt freely as formerly authorized p. 527, e.g., they voted themselves the remuneration which they were authorized to receive under the repealed Act but failed to have the expenditure approved under sec. 328 C.S.A. (Ex. 1463 (k)).

Notwithstanding subsec. 2(2) of the former By-law, the dues were never, and are still not, collected by the Secretary. This responsibility is attended to by the two Master Pilots, except for pilot boat charges which

are collected by the Department of Transport billing the agents directly. This is an unnecessary duplication of effort.

The Master Pilots calculate the dues (including the surcharge) for each service rendered, partly from the source form made by the pilot concerned and countersigned by the Master, partly from the pilot vessel log book for detention. The source form (entitled *Pilotage Certificate*) was designed for the rates which existed when it was first introduced. The form was not amended when new items were added to the tariff, with the result that incomplete information is provided. The source form contains no information about time. Hence, the St. John's statistics do not show how long the pilots spent on board vessels and their workload can not be appraised without these essential data.

The Master Pilots then make out the invoice on forms supplied by the Authority and make collections, generally by calling personally at the agents. At the same time they collect any other money owed the pilots, e.g., coastal and outport fees and the linesmen's charges.

Twice monthly the Master Pilots hand over to the Secretary the pilotage dues they have collected (excluding coastal and outport fees) together with the supporting documents. The Secretary, after checking the source forms, invoices and his own records as Harbour Master, deposits the receipts in a special bank account in the name of the Pilotage Authority. The pilots' shares are then determined. The Secretary pays into the Pilotage Authority's Expense Fund the amount yielded by the surcharge, divides the remainder of the bank account equally among the eight pilots and after withholding their income tax deductions, issues each pilot a cheque in the net amount of his share. For his part, the Master Pilot divides equally among all the pilots the profits accruing from the linesmen's service after meeting expenses.

Financing and Bookkeeping

The method of meeting the District's administrative and operating expenses is inherited from the first pilotage legislation in Newfoundland, the 1833 Act (pp. 525-526) which was the most appropriate for that period. Later, the control and surveillance of pilotage service became an accessory function of the Harbour Authority which had to have revenues and assets of its own. At present, three types of Fund are kept, all segregated:

- (a) what may be called the *Pilotage Fund* in which all the pilotage dues are deposited;
- (b) the *District Expense Fund*, also called the Maintenance Fund, which belongs to the Pilotage Authority and serves for defraying District operating expenses;
- (c) The *Provident Fund* also called the Trust Accounts. (vide p. 562).

The accounting procedure takes the simplest possible form: separate bank accounts with all expenditures made by cheque. In this report (Ex. 250) dated March 11, 1966, the Department of Transport Auditor made the following appraisal of the system:

"(b) Insufficient financial records are maintained. The present state of accounting is that cheques are issued to meet payrolls, and monies are deposited to the respective bank accounts. No formal bookkeeping records are maintained to reflect financial transactions and balances. The necessary summaries were compiled at the time of audit, for the purpose of completing financial statements."

The Auditor recommended that:

"(b) the financial documentation be placed in qualified hands for financial control, to ensure protection of all persons involved, the pilots, the persons acting on the Authority and the Secretary, Capt. H. W. Stone."

This recommendation was followed. The bookkeeping has been supervised since then by an accountant and each year an audited financial statement is made.

The *Pilotage Fund* is a separate bank account into which all pilotage dues collected by or on behalf of the Pilotage Authority are deposited. Despite the governing By-law provision, pilot boat charges do not form part of this fund because, as seen earlier, the Department of Transport duplicates the procedure (and contrary to the practice followed in the New Westminster District where the situation is the same) assumes responsibility for collecting them. In the following comparative table the revenue yielded from this source has been added in order to give a complete picture.

All the pilotage dues in this fund belong to the pilots and are paid either to them or on their behalf. The cost to the pilots of the pilot vessel is the amount of boat charges collected; hence, the receipts and expenditure entries for this item are identical. Following local practice, the cost to the pilots of the administration of the District is the amount yielded by the surcharge (hence, the expenditure item under this heading).

This fund is supposed to be expended fully twice a month, with neither balance nor reserve kept, since none is required. In fact, a small balance is always carried over.

The financial statements reflect the factual situation by showing the three funds as a single operation where the distinction between the three funds, especially the Pilotage Fund and the Expense Fund, is not strictly respected. For better comprehension comparative separate tables were made, one for each fund, on the information provided in the financial statements for the years 1965, 1966 and 1967.

The first two tables show the operation of the *Pilotage Fund* and the *Expense Fund* on the basis of receipts and disbursements. The third table shows the extent of the aggregate monetary assets in both funds as of December 31 of each year (a comparative statement for the *Provident Fund* is on p. 563).

Pilotage Fund (Receipts and Disbursements)			
	1965	1966	1967
Receipts			
Pilotage dues:			
Voyages (scale fees).....	\$ 75,461.13	\$ 89,351.76	\$ 92,239.90
Movages (shift fees).....	6,213.00	10,545.00	10,539.00
Surcharge.....	2,659.78	6,424.92	7,197.01
Pilot boat charges.....	21,890.00	22,000.00	22,190.00
	\$106,223.91	\$128,321.68	\$132,165.91
Disbursements			
Administration (surcharge).....	\$ 2,659.78	\$ 6,424.92	\$ 7,197.01
Pilot vessel service.....	21,890.00	22,000.00	22,190.00
Pilots' contribution to Provident Fund....	400.00	400.00	400.00
Pilots' licences.....	45.00	40.00	nil
Pilots' remuneration.....	81,403.88	99,457.12	102,378.64
	\$106,398.66	\$128,322.04	\$132,165.65
Surplus or deficit.....	-\$174.75	-\$0.36	\$0.26

This fund is, or should be, expended in the following way and order:

- The surcharge, which represents the pilots' contribution out of pilotage dues toward District expenses is paid to the Pilotage Authority's Expense Fund. It is a final expenditure.
- The aggregate amount of the pilot boat charges collected, if collected by the District Authority, is paid to the Receiver General of Canada as the cost to the pilots of the pilot vessel service provided for them by the Department of Transport.
- The \$5 annual licence renewal fee each pilot had to pay is a further contribution by the pilots to the Expense Fund. It was apparently discontinued in 1967.
- The \$50 that each pilot has to pay once a year into his own trust account is his share of the \$100 contribution to his retirement fund.
- The remainder is paid over to the pilots who, in accordance with their private arrangements, pool it with their other revenues derived from linesmen's services and outport and coastal pilotage.

The *Expense Fund* is a trust fund in the hands of the Pilotage Authority to finance District administration. It is a relic of the time when the Pilotage Authority was also the Harbour Authority, administration was handled by a common staff and costs could not be segregated. This is the problem with

which the auditors were faced in 1964 when they had to segregate the pilotage assets from those of the port in arranging for the National Harbours Board to take over the administration of the port.

Prior to 1965, this fund was the Harbour Authority's Fund into which the present receipts of the Expense Fund were paid, i.e., the pilotage surcharge, the pilots' annual licence renewal fees and fines. It was stated that this pilotage contribution was never sufficient to meet the expense of operating the service (the most important item was the cost of pilot vessel service) and the resultant deficit was met out of harbour revenues.

After the pilotage services was separate from port administration, the same system was retained and the former pilotage contribution to the Harbour Fund became the Pilotage Authority's Expense Fund, which the Pilotage Authority considers it may spend as required without authorization. Such a system is not permissible under the present governing legislation, i.e., sec. 328 C.S.A. (Part I, pp. 100 to 116).

The details of this Expense Fund for 1965, 1966 and 1967 are:

	Expense Fund (Receipts and Disbursements)		
	1965	1966	1967
Receipts			
Surcharge.....	\$ 2,659.78	\$ 6,424.92	\$ 7,197.01
Licence fees.....	45.00	40.00	nil
Interest.....	164.96	102.99	257.50
Miscellaneous.....	nil	26.00	nil
	\$ 2,869.74	\$ 6,593.91	\$ 7,454.51
Disbursements			
Pilot Commissioners' remuneration.....	\$ 1,200.00	\$ 1,100.00	\$ 1,200.00
Secretary's salary.....	437.50	750.00	750.00
Casual wages.....	275.00	10.00	75.00
Workmen's Compensation.....	1,278.00	1,076.75	1,300.00
Authority's share to Provident Fund.....	400.00	400.00	400.00
Pilot house: supplies.....	75.13	nil	nil
heating.....	169.01	nil	nil
Repairs and maintenance.....	nil	74.83	nil
Depreciation.....	nil	59.16	47.32
Office expenses.....	163.18	65.77	295.25
Tel. & tel.....	69.63	34.26	24.95
Travelling.....	17.90	nil	75.00
Advertisement.....	103.65	nil	nil
Bank charges.....	19.75	16.70	23.26
Audit & accounting.....	nil	350.00	350.00
Miscellaneous.....	20.75	83.58	159.81
	\$ 4,229.50	\$ 4,021.05	\$ 4,700.59
Surplus or deficit.....	-\$1,359.76	\$ 2,572.86	\$ 2,753.92

Money on Hand December 31 (excluding Provident Fund and Fixed Assets)			
	1965	1966	1967
Petty cash.....\$	3.84	\$ 3.55	\$ 6.29
Pilots' payroll bank account.....	649.21	167.56	76.16
Maintenance bank account.....	1,083.29	1,801.25	3,246.41
Savings accounts.....	3,399.44	3,502.43	3,759.93
Investments.....	nil	2,000.00	3,000.00
	\$ 5,135.78	\$ 7,474.79	\$10,088.79

This fund, which is used exclusively to meet the expenses of operating the District, appears to be used judiciously. However, as pointed out to the Pilotage Authority in 1966 by the Department of Transport Auditor, the expenses are illegally incurred since the procedural requirements of Part VI C.S.A. are not being observed. The Auditor recommended that the proper authority be obtained but apparently no action was taken on his recommendation.

COMMENTS

Accumulating a surplus and building a reserve (as is now being done) is not permissible under the present statute. Furthermore, such action is not warranted in St. John's since, with D.O.T. providing the pilot vessel service and the pilot station, there are no longer any substantial expenditures to be financed in advance. This practice is an unauthorized accumulation of public funds and should be discontinued.

If the surcharge is retained, it should be adjusted from year to year so that the proceeds simply meet current anticipated expenditures, or anticipated capital expenditures, if any.

The surcharge should be abolished until the accumulated reserve is exhausted, or until a new financing system is introduced as a result of reorganizing the pilotage administration under the recommended new Pilotage Act.

Until sec. 328 C.S.A. is abolished or modified, the Pilotage Authority is bound by its provisions and must seek the necessary approval for its expenditures from the Governor in Council.

7. PENSION FUND

The *Provident Fund*, as explained earlier, is a type of savings fund to provide the pilots with a lump sum of money at the time of their retirement.

It was first established in 1940 when it replaced the financial assistance provisions contained in the legislation which up to then had authorized the Pilotage Authority to provide what financial assistance was deemed

necessary for incapacitated pilots out of the surplus of the Authority's fund, then called the Pilots' Fund (p. 529). In 1940, the Trust Account system was adopted (vide Part I, C.10, Gen. Recommendation No. 39 and p. 765). A Trust account was opened in the name of the Pilotage Authority in trust for each pilot. The accumulated money in the Pilots' Fund was divided equally among the Trust Accounts, each pilot being credited with \$300. Thereafter, the annual contribution to each Trust Account was fixed at \$100 per year, \$50 being contributed by the pilot and \$50 by the Pilotage Authority out of its Expense Fund. The pilot, if he so desires, may add voluntary contributions to it. The accumulated money, plus the accrued interest at bank rates, forms the retirement fund of each pilot. Payment is effected by merely handing over to the ex-pilot, or his estate, control over the bank account concerned. In the event of premature retirement for causes other than physical unfitness, only the pilot's own contributions are returned to him. When the Canada Pension Plan was introduced the Pilotage Authority felt that it met the same aims as their Provident Fund which they then decided to discontinue. In fact, the full amount appearing to each pilot's credit was paid to each of them, thus bringing each Trust Account balance to nil. On June 14, 1966, a directive was received from the Director of Taxation advising that for the purposes of the Canada Pension Plan the pilots could not be considered as employees of the Pilotage Authority and, therefore, that the full contribution should come from the pilots' earnings. The full contribution to the Canada Pension plan was then deducted from the pilots' earnings, and the Pilotage Authority reinstated the Provident Fund on the same basis as before. The first deposit was made November 30, 1966, at the Eastern & Chartered Trust Company Savings Department, the St. John's Pilotage Authority depositing \$50 for each pilot per year and each pilot contributing the same amount (Ex. 1463(q)).

The following table indicates the situation for the years 1965, 1966, and 1967:

	Provident Fund (Assets and Revenues)		
	1965	1966	1967
Assets and Revenues			
On hand January 1.....	\$11,761.45	\$12,922.77	\$ 800.00
Receipts:			
Pilots' share (one half).....	400.00	400.00	400.00
Authority's share (one half).....	400.00	400.00	400.00
Interest.....	361.32	nil	31.60
	12,922.77	13,722.77	1,631.60
Expenditures.....	nil	12,922.77	nil
Money on hand December 31.....	\$12,922.77	\$ 800.00	\$ 1,631.60

The Provident Fund was never intended to be a pension scheme. The pilots find the system unsatisfactory and would like to be provided with a true pension plan but refuse to assume the full cost of it themselves. The attempt to establish a satisfactory pension plan appears to have been one of the principal administrative problems of the St. John's Harbour and Pilotage Commission.

In 1956, the Department of Transport made a proposal which the pilots found unsatisfactory because they were expected to bear the whole financial burden. The subject was dropped when the St. John's Commission was unable to raise the money required to set up a pension plan based on a sharing of costs by the pilots and the Commission.

This Commission's views on the matter are expressed in Part I, C.10 and General Recommendation No. 39, to which reference is made.

Chapter D

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE ST. JOHN'S, NFLD., PILOTAGE DISTRICT

PREAMBLE

The St. John's pilots provide excellent service and are exceptionally well qualified.

The main problem in this District is adjusting the administrative organization of both the District and the service to the governing legislation and to current needs. Specific recommendations were made in the form of comments and remarks as the subject-matters concerned were studied. They have not been listed here to avoid repetition and also because they should be read in their context for better comprehension.

RECOMMENDATION No. 1

Appropriate Measures to Be Taken Immediately to Regularize the Pilotage Service in the Pilotage District of St. John's, Nfld.

As seen on p. 524, the District and its pilotage service have been operated without any legal authority for the last four years because the District has lacked local regulations since December 31, 1964, without which it can not function legally.

From the explanations received (p. 524), it is clear that this deplorable state of affairs is not attributable to bad faith but to a profound misconception by all concerned of the public character of a Pilotage District and of the rôle played by District regulations in the scheme of organization provided in Part VI C.S.A.

If this were not the case, other steps should have been taken to correct the situation. If the stage had been reached where the two Authorities involved in the regulation-making process had reached an *impasse*, either the Pilot Commissioners should have resigned because they had been placed in the untenable position of not being able to discharge their mandatory responsibilities, or the Governor in Council should have taken the only coercive steps permitted him under Part VI C.S.A., i.e., either abrogate the District

or annul the appointment of the Pilot Commissioners and appoint new members, or, as an interim measure, appoint the Minister of Transport Pilotage Authority in order to draw up the required regulations.

If the Commission's General Recommendation No. 19 is implemented (Part I, p. 515), a problem of this nature can be solved readily since the proposed Central Authority will have the power to enact the essential regulations *proprio motu*. Any interested party, including the Pilotage Authority, will then be entitled to register opposition to such regulations, in which case a public hearing will have to be held. An unsuccessful opposing party will have a right of appeal to the proposed Pilotage Regulations Appeal Board.

For the time being, if complete agreement has not been reached between all concerned on some of the provisions of a complete set of regulations, then, at least as an interim measure, temporary provisions should be enacted forthwith by the Pilotage Authority to reflect and legitimize the rates being charged and the practice now being followed.

RECOMMENDATION No. 2

Pilotage in the District of St. John's to Be Classified a Public Service

It is in the public interest that an adequate and efficient pilotage service be available at St. John's but under the prevailing circumstances and conditions such a service should not be classified an essential public service.

St. John's, as a port, is not dependent upon one or a few local industries but is the main port in Newfoundland and provides for the essential needs of the whole province and of shipping in general.

Although its harbour is excellent with only minor navigational difficulties, a Master unfamiliar with it would hesitate, except under favourable conditions, to negotiate the exposed entrance and the restricted channel of The Narrows and manoeuvre in its confined waters. Competent, qualified pilots provide shipping with an appreciable service which also helps the port authorities to expedite vessel movements. Otherwise, vessels, especially the larger ones, are liable to suffer prolonged delays during fog, adverse weather or periods of congested traffic.

The physical limitations of The Narrows and of the harbour emphasize the need for well qualified pilots to conduct the larger ships that are likely to replace those now calling at St. John's.

On the other hand, local navigational knowledge can readily be acquired. Regular traders do not employ a pilot, as is clearly shown by the high percentage of non-exempt vessels dispensing with pilotage services with no adverse effect on the safety of navigation.

Chapter E

APPENDICES

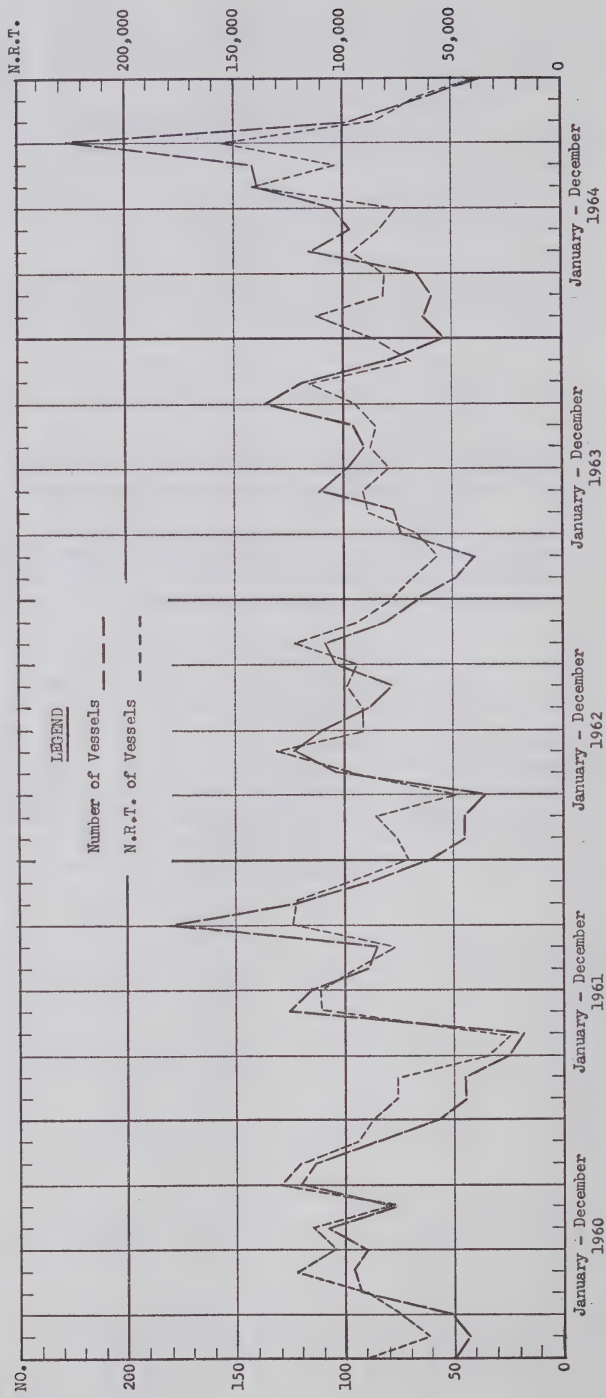
APPENDIX A

- (1) *Graph*—Monthly Number of Vessels and N.R.T. Entering St. John's, Nfld., during the Years 1960-1964 Inclusive.
- (2) *Table*—1960-1964 Figures on Which the Above Graph is Based, Giving in Addition the Annual Total and Monthly Average for Both the Number of Vessels and N.R.T. of Vessels Entering St. John's Nfld., during the Five-year Period, together with Their Source of Information.

APPENDIX B

- (1) *Graph*—Per Cent Increase or Decrease in Volume of Traffic Entering St. John's, Nfld., Monthly for Each Year during 1960-1964.
- (2) *Table*—1960-1964 Figures on Which the Above Graph is Based, Giving the Actual Number of Vessels Entering Each Month, the Annual Total Number of Vessels Entering Each Year, the Per Cent Increase or Decrease Each Month, the Average N.R.T. per Vessel Entering Each Month, the Annual Average N.R.T. per Vessel Each Year, the Per Cent Increase or Decrease each Month, together with the Source of Information for Both Tables.

Appendix A (1)
MONTHLY NUMBER OF VESSELS AND N.R.T. ENTERING ST. JOHN'S, NFLD.,
During the Years 1960-1964 Inclusive



Appendix A (2)

MONTHLY NUMBER OF VESSELS ENTERING ST. JOHN'S, NFLD.,
During the Five-Year Period 1960-1964

Month	1960	1961	1962	1963	1964
January.....	50	45	45	49	63
February.....	43	45	45	40	59
March.....	52	24	35	74	66
April.....	93	18	104	77	115
May.....	96	126	123	111	97
June.....	90	115	111	98	105
July.....	109	89	89	90	138
August.....	77	85	78	96	142
September.....	121	181	105	136	227
October.....	114	126	109	118	98
November.....	81	89	81	81	67
December.....	56	60	65	54	37
Total.....	982	1,003	990	1,024	1,214
Monthly Average.....	81.8	83.6	82.5	85.3	101.2

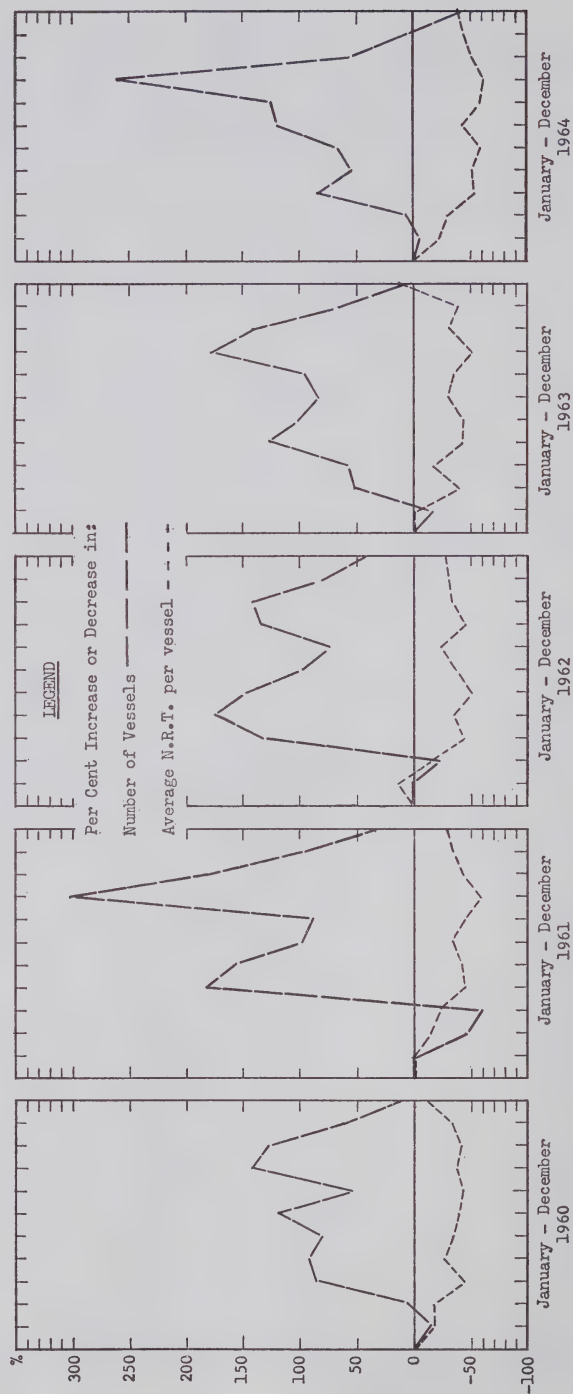
N.R.T. OF VESSELS ENTERING ST. JOHN'S, NFLD.,
During the Five-Year Period 1960-1964

Month	1960	1961	1962	1963	1964
January.....	88,972	76,439	75,864	69,065	111,932
February.....	61,982	76,295	84,725	56,368	81,849
March.....	75,159	33,657	49,215	62,193	81,367
April.....	89,666	22,750	95,896	87,626	95,663
May.....	122,661	110,620	131,362	91,431	83,812
June.....	104,567	111,845	91,428	79,287	76,340
July.....	116,428	95,988	92,103	87,337	140,505
August.....	77,655	77,343	99,441	85,319	104,422
September.....	130,441	122,832	94,187	93,920	155,199
October.....	120,779	121,714	123,148	114,994	86,249
November.....	94,169	98,139	94,172	69,118	65,786
December.....	86,776	71,743	77,876	84,663	39,418
Total.....	1,169,255	1,019,365	1,109,417	981,321	1,122,542
Monthly Average.....	97,437.9	84,947.1	92,451.4	81,776.8	93,545.2

SOURCE OF INFORMATION: Exhibit 245.

Appendix B (1)

PER CENT INCREASE OR DECREASE IN VOLUME OF TRAFFIC ENTERING ST. JOHN'S, NFLD.,
Monthly for Each Year During 1960-1964



Appendix B (2)

PER CENT INCREASE OR DECREASE IN VOLUME OF TRAFFIC ENTERING ST. JOHN'S, NFLD.,
Monthly During the Five Year Period 1960-1964

Month	VESSELS									
	1960		1961		1962		1963		1964	
	No.	%	No.	%	No.	%	No.	%	No.	%
January.....	50	0	45	0	45	0	49	0	63	0
February.....	43	-14.0	45	0.0	45	0.0	40	-18.4	59	-6.4
March.....	52	4.0	24	-46.7	35	-22.2	74	51.0	66	4.8
April.....	93	86.0	18	-60.0	104	131.1	77	57.1	115	82.5
May.....	96	92.0	126	180.0	123	173.3	111	126.5	97	54.0
June.....	90	80.0	115	155.6	111	146.7	98	100.0	105	66.7
July.....	109	118.0	89	97.8	89	97.8	90	83.7	138	119.1
August.....	77	54.0	85	88.9	78	73.3	96	95.9	142	125.4
September.....	121	142.0	181	302.2	105	133.3	136	177.6	227	260.3
October.....	114	128.0	126	180.0	109	142.2	118	140.8	98	55.6
November.....	81	62.0	89	97.8	81	80.0	81	65.3	67	6.4
December.....	56	12.0	60	33.3	65	44.4	54	10.2	37	-41.3
Annual Total.....	982		1,003		990		1,024		1,214	

AVERAGE NET REGISTERED TONNAGE PER VESSEL										
Month	1960		1961		1962		1963		1964	
	No.	%	No.	%	No.	%	No.	%	No.	%
January.....	1,779.4	0	1,698.6	0	1,685.9	0	1,409.5	0	1,776.7	0
February.....	1,441.4	-19.0	1,695.4	-0.2	1,882.8	11.7	1,409.2	-0.02	1,387.3	-21.9
March.....	1,445.4	-18.8	1,402.4	-17.4	1,406.1	-16.6	840.5	-40.4	1,232.8	-30.6
April.....	964.2	-45.8	1,263.9	-25.6	922.1	-45.3	1,138.0	-19.3	831.9	-53.2
May.....	1,277.7	-28.2	877.9	-48.3	1,068.0	-36.7	823.7	-41.6	864.0	-51.4
June.....	1,161.9	-34.7	972.6	-42.7	823.7	-51.1	809.1	-42.6	727.1	-59.1
July.....	1,068.2	-40.0	1,078.5	-36.5	1,034.9	-38.6	970.4	-31.2	1,018.2	-42.7
August.....	1,008.5	-43.3	909.9	-46.4	1,274.9	-24.4	888.7	-37.0	735.4	-58.6
September.....	1,078.0	-39.4	678.6	-60.1	897.0	-46.8	690.6	-51.0	683.7	-61.5
October.....	1,059.5	-40.5	966.0	-43.1	1,129.8	-33.0	974.5	-30.9	880.1	-50.5
November.....	1,162.6	-34.7	1,102.7	-35.1	1,162.6	-31.0	853.3	-39.5	981.9	-44.7
December.....	1,549.6	-12.9	1,195.7	-29.6	1,198.1	-28.9	1,567.8	11.2	1,065.4	-40.0
Annual Average.....	1,190.7		1,016.3		1,120.6		958.3		924.7	

SOURCE OF INFORMATION: Exhibit 245.

Section Seven

PILOTAGE IN NEWFOUNDLAND OUTPORTS AND COASTAL AREAS

PREAMBLE

Apart from port pilotage in St. John's, the following pilotage services exist in Newfoundland:

- (a) port pilotage at various ports referred to hereafter as outports;
- (b) coastal pilotage along the northeast coast;
- (c) inland and port pilotage at the mainland harbour of Goose Bay.
(Goose Bay is a special case which will be studied separately in Section Eight.)

A large number of outports have local pilots but except in the three other Newfoundland Pilotage Districts (Botwood, Humber Arm and Port aux Basques) they meet competition from outside pilots. This is usually the case on the northeast coast when a coastal pilot is on board and attends to pilotage at the various ports where the ship calls *en route*.

There has never been legislation governing coastal pilotage. Between 1888 and 1965, a general Newfoundland statute placed pilotage services in outports designated by the Government under public control, but did not integrate these services with port operations as a separate statute had done for St. John's from 1928 to 1964. On January 1, 1965, the Newfoundland pilotage legislation for outports was superseded by Part VI C.S.A., in the same way as the latter became applicable to St. John's.

Subsection I

COASTAL PILOTAGE AND OUTPORTS

1. HISTORICAL BACKGROUND

Before road and railway communications were built, ships were the only adequate means of transportation between the various communities along the Newfoundland coast. Generally, a number of local pilots who exercised their profession without legislative control were available in each port. They made their own charges and conditions and competed as private contractors. This situation still obtains in most of the outports. In 1888, an Act was passed to provide the basis for public control where required in the public interest. This control was extended to the main outports, but they declined in number as shipping traffic decreased as a result of competition from increased land transportation, so much so that now only three outports have their pilotage service publicly regulated, i.e., Botwood, Humber Arm and Port aux Basques.

The first pilotage statute governing Newfoundland outports was adopted in 1888 (51 Vic. c.26). It was entitled "An Act respecting Pilots and Pilotage for Ports in this Island other than St. John's". It was modelled on the 1833 St. John's pilotage statute with the difference that, since the statute was legislation of general application, it left local details to be arranged by regulation.

The provisions of the Act were to apply only to those outports to be designated as *Pilotage Ports* by the Governor in proclamations. The Act provided for a separate Pilotage Authority for each port in the form of a Board composed of three members serving gratuitously. The Pilotage Authority's powers and functions were limited to general control over a free enterprise service, i.e., licensing, surveillance and the arbitration of disputes, regulation-making concerning rates for pilotage and the general conduct of pilots. Offences and breaches of regulations committed by pilots were to be dealt with by the regular courts and an appeal was provided when a penalty exceeding \$12 was imposed.

The Act of 1888 became Chapter 179 of the Consolidated Statutes of Newfoundland, 1916, "Of Outport Pilots and Pilotage", amended in 1930 by 21 Geo. V. c. 17 (Ex. 1462(a)).

The 1916 Act was mainly a consolidation of the 1888 Act. It made the Pilot Commissioners a statutory Court for the determination of all claims for pilotage and salvage of anchors and cables in which a pilot was concerned; procedure, court costs, tariff and means to enforce judgments were to be the same as those used in Magistrates' Courts. However, their judicial jurisdiction still did not extend to offences and breaches of regulations committed by pilots which were to be prosecuted before the regular tribunals of penal jurisdiction. The Act applied to all ships and vessels and made the payment

of dues compulsory. The rates, together with exemptions, were to be fixed by the Pilot Commissioners through regulations which became effective when duly published. The Act provided for absolute statutory exemptions for H.M. ships, vessels belonging to the Royal Yacht Club, coasting and fishing vessels. It recognized the right of unlicensed pilots to pilot in the absence of licensed pilots and to receive payment at official rates.

The outports which were proclaimed *Pilotage Ports* under the foregoing Newfoundland legislation were:

Outport	Date of Proclamation	Effective Date
Fogo.....	July 17, 1888	February 1, 1889
Little Bay.....	September 19, 1888	April 2, 1889
Philleys Island.....	April 24, 1893	November 1, 1893
Lewisporte.....	July 14, 1902	April 1, 1903
Botwoodville (Botwood).....	August 24, 1909	March 1, 1910
Port aux Basques.....	December 13, 1910	July 1, 1911
Humbermouth, later called Bay of Islands, now known as Humber Arm..	August 18, 1923	August 5, 1924
Catalina and Port Union.....	November 20, 1933	November 20, 1933
Bay Bulls.....	January 12, 1943	March 1, 1943

Of these nine Pilotage Ports, only three are now operating as Pilotage Districts: Botwood, Port aux Basques and Humber Arm (Corner Brook).

The Newfoundland outport pilotage legislation was abrogated effective December 31, 1964, through the same legislative process as was adopted for St. John's. The 1964 federal Act (13 Eliz. II c. 33) first section, reads as follows:

"1. *An Act respecting Outport Pilots and Pilotage*, Chapter 179 of the Consolidated Statutes of Newfoundland, 1916 and *The Outport Pilots and Pilotage Act*, Chapter 215 of the Revised Statutes of Newfoundland, 1952, and all amendments thereto and all orders, rules and regulations made thereunder are repealed."

This provision of the Act was to come into force when proclaimed by the Governor in Council. This was done by proclamation dated December 23, 1964, effective December 31, 1964 (SOR/65-21, Ex. 1462(b)). Concurrently, Part VI C.S.A. was proclaimed for all Newfoundland (SOR/65-22, Ex. 1462(b)). At the same time as for St. John's, the necessary regulations were made by the Governor in Council for the reorganization under Part VI C.S.A. of three of the four existing outport pilotage organizations (Lewisporte was not reactivated). These Governor in Council regulations will be referred to in the subsections dealing with each of these three Districts.

2. EVIDENCE

Coastal pilotage as such is available only on the northeast coast of Newfoundland for traffic proceeding through the 50-mile inside passage of Sir Charles Hamilton Sound instead of taking the outside route off Funk Island. Sir Charles Hamilton Sound, situated to the south and west of Fogo Island, is often clear of ice owing to the southerly current that flows from Cape Fogo, while the outside route is blocked.

This inside route saves time and is particularly useful for vessels bound to or from Notre Dame Bay ports, such as Twillingate, or the Bay of Exploits ports of Botwood and Lewisporte. Local knowledge and experience are necessary to navigate these restricted waters safely. The Botwood Pilotage Authority recommended the installation of a light and radio beacon on Funk Island, but even with this additional aid to navigation a stranger or non-regular trader would be most unwise to attempt the inside route without the services of a pilot.

Coastal pilotage should not be confused with navigation in open waters along the coast. When a pilot travels in a vessel making a coastal trip that covers long stretches of open water and is engaged solely to perform port pilotage at ports of call, his presence on board (whether or not he assists with the navigation) does not constitute coastal pilotage. This practice is adopted to ensure the ready availability of a pilot at ports where pilotage is not provided or the local service is not reliable. This is particularly the case along the northeast coast for vessels proceeding to Conception Bay ports, such as Holyrood, Long Pond, Manuels and Harbour Grace, and also occasionally along the west coast of the province.

The available shipping statistics do not permit analysis of the volume of traffic which uses the inside passage, even with pilots on board, since those provided by the D.B.S. merely record port arrivals, while ports situated north and northwest of the passage may well be visited from outside open water when the ice has disappeared. However, since most coastal pilotage is performed by the St. John's pilots, their records provide a reasonably accurate picture, assuming that all vessels bound to ports west of the passage and employing a pilot would use the inside passage.

Prior to 1960, the St. John's pilots as a group performed neither coastal pilotage nor pilotage at outports (except Holyrood) although for many years individual St. John's pilots undertook to do this work when requested. Up to 1961, there were several coastal pilots other than the St. John's pilots who were thus employed, but in 1965 the St. John's pilots reported that these men had either died or retired and most of this work has now fallen upon their shoulders at the request of agents, owners or Masters.

The St. John's pilots did this type of work during their five days off duty. If one was away on a coastal trip when his turn of duty at St. John's came, he was replaced at St. John's by one of his colleagues.

On January 17, 1963, the St. John's pilots as a group decided to discontinue offering their services for coastal and outport pilotage mainly because they considered some of their colleagues not fully qualified for this type of work (Ex. 265). However, this decision was reversed early in 1964, as is shown by the supplementary brief filed by the St. John's pilots (Ex. 254) in which they stated they were unanimously in favour of continuing this pilotage. Pilots who were fully qualified for this type of work would perform it, while their colleagues who felt that they did not have sufficient knowledge to do so would perform harbour pilotage in St. John's. The pilots available for outports and coastal work make up their own assignment list and pilot in turn.

According to the statistics filed by the St. John's pilots (Ex. 1192), it appears that the main users of coastal and outport pilots are oil tankers. However, there are also cable ships, cargo ships carrying asbestos, copper, paper, timber and general cargo, hospital ships and tugs with tows.

When the St. John's pilots are engaged on coastal work they usually embark off St. John's and remain with the ship until her return. However, there are cases when vessels sail directly from outports for overseas, in which event the pilot returns to St. John's *via* land or air transportation. This occurs particularly when vessels have been piloted to the Botwood District boarding area.

The pilots filed testimonial letters from three Masters and one officer serving on board Irving Oil coastal tankers trading to Newfoundland's northern outports. Irving Oil tankers have been sailing along the coast for several years. These letters commend the St. John's pilots as capable men who are familiar with the approaches to the various outports and coastal anchorages and know the best routes to follow.

Since these pilotage services are not regulated under the Canada Shipping Act, free enterprise prevails, with the result that anyone performing them may fix his own price.

The fees charged in 1963 by the St. John's pilots for this type of work (with the exception of Holyrood) were composed of several items:

- (a) A *coastal pilotage charge* of two components, first, 1¢ per gross ton per one way trip (hence, made twice for a round trip) no matter how many calls the vessel made *en route*; second, a mileage charge of 50¢ per mile calculated from the place the pilot boarded, generally off St. John's, until he disembarked at the completion of the coastal trip, whether the vessel was navigated in open water or in the confined waters of the inside passage (contrary to the practice of the B.C. pilots (Part II, p. 150).
- (b) A *port pilotage charge* for each port pilotage performed *en route*, calculated at the same rates and on the same basis as pilotage

inward and outward at St. John's. If at any of the outports, except the Pilotage District of Botwood (Ex. 1192), the St. John's pilot is not called to perform port pilotage, half a port charge (i.e., one inward trip charge) is made nevertheless, in the same way as half a port charge is made by the St. John's pilots for their off-harbour service p. 546).

- (c) A *transportation charge* in the amount of the out-of-pocket expenses actually incurred by the pilot, including the \$10 pilot boat charge at St. John's.

The revenue derived from outport and coastal pilotage prior to 1960 was kept by the pilot who performed the services. When the St. John's pilots provided this service as a group in 1961, the revenues were pooled and shared equally by all of them (p. 550). For a short period in 1963 they returned to the previous practice but private pooling has since been resumed under new arrangements.

At various outports there are local pilots who may be employed if the ship's Master so decides: at Twillingate, local men employed by the fish plant attend to port pilotage; at Port Union—Catalina, there are two local pilots; since Botwood is a Pilotage District, the St. John's pilots have to hand over to the local licensed pilots; some shipping companies use their own pilots, e.g., the Commission was informed in 1963 that at Long Pond, Manuels, Newfoundland Minerals Limited hired a man who travelled from Nova Scotia whenever his services were required to supervise loading operations and who also attended to pilotage.

Although pilotage in most of the west coast outports is performed by local pilots, the Humber Arm Pilotage Authority has occasionally been asked to make its pilots available for service in the neighbouring outports. When such a request can be complied with, the Humber Arm tariff is applied plus transportation expenses. Contrary to the procedure in St. John's, the dues so earned are included in the District earnings and shown as a separate item of revenue on the financial statement (p. 640). However, these earnings are not shared among the pilots but are paid to the pilot who performed the outside service.

In the fall of 1962, four vessels called at St. George's Bay. One was approximately 22,000 gross tons and the others varied between 6,000 and 12,000 tons. The first vessel was piloted in by the Humber Arm pilot and the others by the local pilot.

Local unlicensed pilotage also existed at Port Harmon, a harbour especially built to serve the former U.S. Air Force base at Stephenville. Pilotage was then performed by a Canadian holding a Master's foreign-going certificate and employed for that purpose by the United States Authorities on a monthly basis.

Near Port Harmon is Port au Port where there is a limestone quarry that supplied the iron ore works in Sydney, N.S. Two company-owned vessels were on a regular run. It appeared that a local pilot was available.

Bonne Bay, where vessels call occasionally, is forty miles north of Bay of Islands. The Commission was informed that the traffic consists of regular traders who do not need pilots.

Approximately 100 miles north of Bay of Islands is Hawke Bay where small vessels call for pulpwood. Since there is no wharf, vessels are forced to anchor. Pilotage is limited to the channel which is ten miles long and five hundred yards wide at its narrowest.

The Chairman of the Humber Arm Pilotage Commission was of the opinion that there is no practical need to extend pilotage to the west coast of Newfoundland because vessels calling at the above-mentioned ports are regular traders and do not need pilots.

3. STATISTICS

The pilots may be called upon to pilot a ship in and out of any harbour or landing place along the whole coast of the Island. While most coastal and outport pilotage performed by the St. John's pilots is in the 300-mile area between Bay Bulls and St. Anthony, they are also occasionally required to pilot vessels to other ports, e.g., on one occasion during the three-year period 1962-1964, one piloted a ship to a position off Corner Brook, and, in 1961, a St. John's pilot was even used to deliver an R.C.A.F. rescue boat from Argentina to Chicoutimi, P.Q.

The table on pp. 586-587 indicates in geographical order from south to north the various ports of call where the St. John's pilots may go in the performance of such services. The table shows the number of arrivals at each port of ships of 250 NRT and over for the years 1960 to 1967 and their average NRT per year. It also shows the number of requests met by the St. John's pilots in the years 1962, 1963 and 1964. The table on pp. 588-589 shows for the west and south coasts the same information with the exception of the St. John's pilots' statistics since they very seldom had any occasion to pilot in that area.

4. PRINCIPAL OUTPORTS

HOLYROOD

Holyrood Bay is situated at the southeastern end of Conception Bay some 30 miles by road and 50 miles by sea from St. John's. The head of the Bay divides into two coves named North and South Arms. A T-shaped wharf with 33 feet alongside, the property of Golden Eagle Refining Company of Canada Limited, is situated on the eastern side of South Arm.

This port accounts for about one third of the St. John's pilots' outport pilotage. They began taking crude oil tankers to Holyrood February 5, 1961. By way of exception, coastal fees are not charged whether the pilot boards or disembarks off St. John's or off Holyrood, nor is there any charge made for the pilots' transportation. When the pilots travel by land they arrange their own transportation and are reimbursed their out-of-pocket expenses, or \$6 per one-way trip, out of their pooled earnings. As a rule, the pilots board at St. John's Harbour entrance when vessels are inward bound to Holyrood and sometimes remain with the ship in order to pilot them out. The pilots disembark off Holyrood in Conception Bay and the company's launch is then used to bring them back to Holyrood.

Golden Eagle Refining Company of Canada Limited advises vessels calling at Holyrood that pilotage, though not compulsory, is available on signal at St. John's Harbour entrance. It further advises that the company has a launch available for taking pilots, customs officers and other officials to and from the ships within Holyrood Bay.

The tankers calling at Holyrood are in the vicinity of 7,000 or 8,000 tons net, or 12,000 to 14,000 tons gross.

In April, 1962, the pilots addressed a memorandum to the St. John's Harbour and Pilotage Commission seeking to include Holyrood in the St. John's District. They submitted that they provided a necessary service and that they should be entitled to official Government recognition. The Pilotage Commission did not accede to this request. It is reported that the Pilot Commissioners agreed in principle with the pilots' proposal but thought that the time was not opportune to raise the matter.

BAY ROBERTS

Bay Roberts is situated on the western side of Conception Bay some 40 miles from St. John's by sea. There is a coal terminal for landing and distributing coal locally. Only coasting vessels engaged in the coal trade call. Cables from Europe and the United States terminate at Bay Roberts. Pilots are seldom employed.

HARBOUR GRACE

Harbour Grace, also situated on the western side of Conception Bay, is some 38 miles from St. John's by sea. There is an oil terminal for local distribution of petroleum products. Only small tankers call. The entrance channel runs between submerged reefs and is indicated by two buoys only. The *Newfoundland Pilot*, (3rd. Edition), p. 275 (Ex. 222) states, "Pilotage is not compulsory, but pilots may be obtained, on prior notice, off Harbour Grace Island".

LONG POND, MANUELS

Long Pond, Manuels, situated in the southeastern part of Conception Bay, is some 42 miles from St. John's by sea. Newfoundland Minerals Limited ships pyrophyllite from there. The company charters for that purpose one ship annually, but not necessarily the same ship every year. This ship makes approximately six trips a year to Long Pond, Manuels.

The Commission was informed that the company hires its own pilot who is flown from Nova Scotia to St. John's whenever his services are required, boards the vessel off Long Pond, Manuels from a rented craft and stays with the vessel until she leaves, which may be from two days to a week. However, this pilot is also employed by the company to advise on loading operations and the use of equipment in general.

It appears that this company has never used a St. John's pilot for the purpose of piloting its chartered vessels in and out of Long Pond, Manuels.

WABANA

Wabana is a company town and port on Bell Island which is situated on the eastern side of Conception Bay approximately 34 miles from St. John's by sea.

Iron ore mining on the northern side of the island used to be an extensive operation and the ore was exported through Wabana. The number of arrivals and the size of vessels have drastically decreased from 258 ships averaging 4,934.5 NRT in 1960 to 10 ships averaging 1,753.2 NRT in 1967.

CLARENVILLE

Clareville is situated at the western end of the northwest arm of Trinity Bay, approximately 90 miles from St. John's by sea. There is an oil terminal for local distribution of petroleum products, and a railway pier used for loading scrap. The entrance is narrow, landlocked and not marked by buoys. Vessels bound for Clareville are advised by the *Newfoundland Pilot*, (3rd. Ed.) to obtain a pilot at Hickman's Harbour.

Newfoundland Hardwoods Limited operates a creosoting plant, a timber yard and an asphalt plant at Clareville. The company owns its wharf. Vessels calling at the company's wharf are handled by a local pilot who owns and operates schooners. Vessels handled at the company's wharves range from 3,000 to 12,000 gross tons. They are chartered. The frequency of calls varies from a minimum of three to a maximum of 14 a year: in 1962, there were four calls and in 1961, eight. The asphalt tankers make approximately one trip every three weeks between May and October.

The fee charged by the local pilot in 1963 was \$85 for a round trip, i.e., inward and outward pilotage including the use of the pilot boat for boarding and disembarking.

CATALINA—PORT UNION

Catalina is situated on the northern side of the entrance of Trinity Bay, approximately 58 miles from St. John's by sea.

It is a large fishing centre, exporting fish, either cured, salted, in boxes or in casks. Imports include general cargo, oil and coal.

The *Newfoundland Pilot*, (3rd Ed.), p. 304 (Ex. 222) states, "fishermen are trustworthy pilots, and are nearly always to be found near the harbour in daytime".

There are two local pilots in Catalina. Their fee in 1963 was \$30 for inward or outward pilotage.

TWILLINGATE

Twillingate, on the southeastern side of Notre Dame Bay approximately 178 miles by sea from St. John's, has an oil terminal with a new channel dredged to the pier. The pilotage service there is for tankers. It was reported that a local pilot is available.

TILT COVE

Tilt Cove is situated on the northern side of Notre Dame Bay near Cape St. John approximately 211 miles from St. John's by sea.

Copper is shipped out of Tilt Cove. There are also oil storage tanks. Since the harbour is very small and open to the sea, vessels have to be ready to leave at a moment's notice.

LA SCIE

La Scie is situated immediately west of Cape St. John at the western entrance of Notre Dame Bay approximately 215 miles from St. John's by sea.

It is a very small port exposed to the sea.

BAIE VERTE

Baie Verte is a sheltered harbour on the peninsula between Cape St. John and White Bay approximately 238 miles from St. John's by sea.

At the lumbering settlement about a mile and a quarter from the head of the bay there are storage facilities for coal and oil. The vessels taken to Baie Verte by pilots are mostly small Irving Oil tankers.

An increase in traffic ranging from three to five ships per week was foreseen in 1963 for shipments of asbestos from local asbestos mines. However, from D.B.S. statistics table on p. 587, the number of arrivals in 1967 is the lowest since 1960, although the average NRT per vessel has slightly increased.

ST. ANTHONY

St. Anthony, situated almost at the tip of the northernmost peninsula of Newfoundland near Belle Isle, some 260 miles from St. John's by sea, is the most important outport in that part of Newfoundland. It is the headquarters of the International Grenfell Mission which maintains a large hospital, an orphanage and a slip for repairing wooden vessels. It is also an oil distribution centre. Fishing is the main source of income.

The entrance channel, which is very narrow and winding, is approximately half a mile long. There are no buoys and few other aids to navigation.

VOLUME AND TYPE OF TRAFFIC ENTERING NEWFOUNDLAND PORTS ON THE EAST-NORTHEAST COAST

Port	1960 CARGO HANDLED			ARRIVALS OF VESSELS 250 N.R.T. AND OVER												1967 CARGO HANDLED			CALLS MADE WITH ST. JOHN'S PILOTS IN 1962-63-64						
	Average total tonnage	Maj. type	% of total tons	1960		1961		1962		1963		1964		1965		1966		1967		Aver- age total tonnage	Maj. type	% of total tons			
				No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.					Av. NRT		
Bay Bulls.....	153.1	est.	94.3	7	481.6	3	364.0	4	741.0	6	728.8	16	905.2	*	*	*	*	*	*	*	*	6	10	18	
Cupids.....	876.2	est.	100.0	14	390.4	15	343.0	19	339.0	27	343.0	29	362.7	21	384.4	19	354.4	70	3,623.2	9,716.5	for.	51.9	10	24	47
Holyrood.....		**			**		10,3,034.5	35	2,602.8	54	2,044.8	73	1,969.9	54	3,635.8	64	3,804.3	52	608.6	373.6	est.	74.6	—	1	1
Bay Roberts.....	625.0	est.	65.2	52	877.4	35	996.0	47	880.2	60	630.5	64	666.6	55	771.4	39	659.6	58	1,122.2	907.4	est.	84.1	2	1	3
Harbour Grace**	859.8	est.	79.2	38	1,097.7	49	1,093.1	51	1,220.8	59	818.7	65	962.5	67	1,299.1	49	1,272.1								
Carbonara***	299.4	est.	72.8	36	718.0	35	764.0	38	761.9	32	757.8	45	550.9	*	*	*	*	*	*	*	*	6	10	18	
Long Pond—Manuels.....		**			**		**	**	**	**	14	1,476.6	20	1,396.2	26	1,284.8	24	1,336.2	25	1,482.3	2,497.8	est.	52.6	1	—
Bell Island†	12,409.6	for.	79.7	258	4,934.5	181	5,608.6	104	5,571.0	96	5,201.7	96	5,623.6	83	6,180.3	67	6,059.7	10	1,753.2	2,106.9	for.	61.7	1	2	
Clareville***	1,844.6	est.	80.3	11	1,816.6	9	2,438.0	11	2,077.2	16	2,688.1	16	2,691.5	8	2,660.3	16	3,602.1	16	2,669.4	2,682.8	est.	75.8	2	6	
Catalina/Port Union***†	423.5	est.	61.5	76	614.2	86	1,258.5	93	1,171.1	93	868.4	113	1,004.6	130	579.0	95	588.3	86	612.3	330.7	est.	58.2	4	3	
Bonavista.....	372.0	est.	86.6	9	444.3	17	507.9	17	402.2	15	396.5	7	453.7	*	*	*	*	*	*	*	*	2	4	—	
Glovertown.....		**			**		6	808.0	5	456.2	2	336.0	—	—	—	—	—	—	—	—	—	2	1	1	
Hare Bay.....	2,994.3	for.	99.9	13	1,010.0	22	1,153.7	18	1,326.3	14	1,073.6	21	1,624.8	18	1,850.2	12	1,624.8	13	1,697.0	3,230.3	for.	96.7	—	—	
Fair Islands.....	2.0	est.	100.0	1	469.0	1	575.0	**	**	**	**	**	**	**	**	**	**	**	**	**	**	—	—	1	
Indian Bay***	2,566.4	for.	99.1	28	1,013.2	23	1,085.0	23	1,249.2	18	1,153.5	18	1,365.2	11	1,646.9	7	1,959.1					—	—		
Greenspond****	18.0	est.	100.0	2	372.5	2	276.0	5	459.4	2	517.5	33	501.1	*	*	*	*	*	*	*	*	1	1	1	
Valleyfield.....	58.8	est.	100.0	29	871.8	34	836.2	38	774.5	26	881.1	65	564.1	*	*	*	*	*	*	*	*	1	1	1	
Wesleyville.....	218.5	est.	94.9	4	537.8	4	364.0	9	374.3	5	420.6	36	510.8	*	*	*	*	*	*	*	*	1	1	1	
Carnarville***		est.	100.0	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	—	—	1	
Gander†	79.5	est.	100.0	2	522.0													4	1,443.5	2,870.5	for.	100.0	—	—	
Fogo†	311.7	est.	100.0	3	539.7	4	393.3	10	679.8	9	456.9	30	510.4	*	*	*	*	*	*	*	*	4	3	2	
Twillingate†	39.9	est.	99.3	134	651.7	154	615.9	147	606.7	151	595.4	154	542.3	*	*	*	*	*	*	*	*	4	3	2	
Lewisville***†	1,325.5	for.	60.1	106	1,258.3	88	1,160.9	94	1,226.2	97	1,137.8	131	1,068.0	103	1,253.9	186	868.2	162	959.8	870.9	for.	57.2	2	5	
Botwood***	4,882.2	est.	91.2	106	3,080.8	95	2,674.2	93	2,901.6	92	3,234.8	108	2,795.5	102	3,183.1	109	3,129.3	116	2,988.0	5,449.0	for.	73.2	15	11	
Fortune†	106.5	est.	85.4	130	558.4	160	585.9	184	540.7	208	530.2	178	584.8	176	583.3	180	598.5	179	639.2	82.0	est.	55.3	—	—	

VOLUME AND TYPE OF TRAFFIC ENTERING NEWFOUNDLAND PORTS ON THE WEST AND SOUTH COASTS*

Port	1960 CARGO HANDLED			ARRIVALS OF VESSELS 250 N.R.T. AND OVER																1967 CARGO HANDLED			
	Average total tonnage	Mai. type	% of total tons	1960		1961		1962		1963		1964		1965		1966		1967		Average total tonnage	Mai. type	% of total tons	
				No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT						
WEST COAST																							
Hawke Bay.....	26.8	est.	100.0	14	695.6	6	797.2	9	811.2	13	1,786.7	10	2,614.0	17	2,677.9	19	2,333.7	27	1,672.6	1,858.0	est.	100.0	
Corner Brook* †	6,816.5	est.	74.5	293	2,125.8	326	2,103.8	313	2,015.8	238	2,522.3	289	2,264.2	292	2,351.5	363	1,874.6	309	1,861.1	2,919.4	for.	63.5	
Port au Port, Agathunag.....	8,780.6	est.	100.0	42	3,586.5	31	3,738.1	23	3,679.8	28	4,054.2	20	3,872.5	2	4,248.0	**	**	**	**	**	**	**	
St. John's.....	7,521.9	est.	99.9	15	1,315.9	8	593.4	9	872.1	7	2,416.6	17	4,888.3	32	5,914.1	30	6,461.0	29	5,560.1	14,121.6	for.	80.4	
SOUTH COAST																							
Port aux Basques\$	449.1	est.	99.9	727	2,466.4	781	2,260.3	849	1,986.2	995	1,876.6	886	1,937.8	940	3,081.8	1,021	3,187.8	1,147	3,143.1	337.8	est.	99.9	
Isle aux Moris***	129.3	est.	52.8	10	557.1	19	544.9	12	531.8	7	435.6	10	399.4	**	**	**	**	**	**	**	**	**	
Rose Blanche***	10.5	est.	100.0	135	609.1	137	633.8	134	576.9	142	599.4	124	651.3	**	**	**	**	**	**	**	**	**	
Burgeo***	79.3	est.	65.8	159	609.0	149	624.0	175	562.1	186	574.6	148	651.3	162	583.9	176	605.9	**	**	**	**	**	
Ramea***	27.1	est.	100.0	133	603.8	135	622.6	133	576.5	144	590.1	125	660.2	**	**	**	**	**	**	**	**	**	
François***	3.4	est.	100.0	103	570.9	104	564.2	102	583.2	106	623.2	95	694.6	**	**	**	**	**	**	**	**	**	
Rencontre West***	3.4	est.	100.0	105	572.5	105	563.2	106	589.9	106	626.2	95	700.5	**	**	**	**	**	**	**	**	**	
Bonne Bay.....	5.6	est.	100.0	36	627.7	36	622.4	31	574.6	40	570.4	44	593.7	**	**	**	**	**	**	**	**	**	
Milltown.....	15.7	est.	100.0	108	583.0	103	557.2	116	575.2	104	635.7	112	766.6	**	**	**	**	**	**	**	**	**	
St. Albans***	15.7	est.	100.0	108	583.0	103	557.2	116	575.2	104	635.7	112	766.6	**	**	**	**	**	**	**	**	**	
Galtois***	18.5	est.	100.0	108	572.7	110	558.9	114	581.3	116	617.6	101	679.5	†††	†††	217	700.9	**	**	153.5	est.	56.9	
Hermitage***	7.5	est.	100.0	109	583.2	105	559.7	106	588.6	103	627.2	97	690.4	**	**	**	**	**	**	**	**	**	
Bay l'Argent***	17.3	est.	100.0	107	607.9	105	581.5	107	596.0	107	634.1	99	775.1	**	**	**	**	**	**	**	**	**	
Rencontre East	1.9	est.	100.0	98	579.7	104	559.6	107	583.3	102	627.7	96	693.3	**	**	**	**	**	**	**	**	**	
Belleoram*** †††	2.6	est.	100.0	104	570.0	104	558.1	106	581.9	104	625.7	93	695.4	**	**	**	**	**	**	**	**	**	
English Harbour																							
West*** †††	13.9	est.	100.0	105	576.9	106	564.0	107	582.6	103	623.6	98	695.6	**	**	**	**	**	**	**	**	**	
Harbour Breton***	31.3	est.	99.4	116	624.9	117	629.3	114	599.5	131	629.9	129	754.8	186	685.5	204	721.4	256	711.3	153.6	est.	77.5	
Grand Bank\$ ***	132.8	est.	85.2	153	577.7	172	551.5	176	542.5	181	557.6	155	620.7	190	581.4	170	601.7	214	670.2	129.1	est.	82.7	
Lamaline.....	22.6	est.	100.0	26	497.5	19	508.0	6	522.0	11	521.9	1	469.0	**	**	**	**	**	**	**	**	**	
St. Lawrence.....	487.5	est.	99.1	149	756.4	146	740.0	165	743.2	151	808.5	137	919.0	163	837.0	148	791.8	142	854.4	564.6	est.	100.0	

Harbour Buffet.....	773.3	est.	72.4	15	712.9	92	490.2	196	436.8	210	448.9	216	442.5	**	**	**	**	**
Port Elizabeth.....	19.9	est.	100.0	13	460.0	28	452.3	17	429.2	7	425.0	1	425.0	**	**	**	**	**
Marystown.....	20.5	est.	100.0	92	619.0	147	530.0	283	486.4	290	521.7	262	523.3	325	510.4	298	561.1	112.2
Burin***.....	181.3	est.	73.9	163	630.1	210	588.7	374	530.0	363	527.9	329	589.6	364	562.8	355	611.5	114.4
Argentia§.....	391.1	est.	99.0	87	738.2	189	663.0	278	554.2	291	502.9	292	527.2	328	528.3	408	509.7	153.3
Placentia Bay***	†††				†††		†††	3	300.7	—	—	3	604.0		**	**	**	est.
Trepassey§§§	126.5	est.	55.8	10	596.4	9	547.8	12	548.1	3	926.7	4	399.0		**	**	**	est.

*St. John's pilots have made only the occasional call in the above ports, i.e., only one call was made to Corner Brook in the three-year period 1962-1963-1964.

†Pilotage District.

‡Includes Curling, Humbermouth and Hughes Brook.

§Pilot services available. (Exhibit 222, *Newfoundland Pilot, Third Edition*).

**Listed but not coded by D.B.S. (Exhibit 1483).

††Includes St. George's, Flat Bay, Flat Point and Turf Point.

†††Tug services available (Exhibit 222).

§§Regular ferry service.

***Regular ship communication services (Exhibit 222).

†††Not listed in D.B.S. statistics (Exhibit 1483).

†††Port available for small craft only.

§§§Local fishermen available as pilots.

Subsection II

PILOTAGE DISTRICT OF BOTWOOD, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Since January 1, 1965, the pilotage organization at Botwood has come under Part VI of the Canada Shipping Act. The only legislation that now applies specifically to this District is contained in the regulations made by the Governor in Council in December, 1964, establishing the District and appointing its Pilotage Authority, and the District regulations that were made by the Pilotage Authority.

Before Confederation, the governing legislation for Botwood differed from that for St. John's in that, through its special statute, St. John's was the only port in Newfoundland where pilotage and harbour operations were legally integrated under a single Authority. Botwood, like the other outports, was governed in pilotage matters by the general statute "An Act respecting Outport Pilots and Pilotage" of 1916 (p. 576). Therefore, as would have been provided under the Canada Shipping Act, the Pilot Commissioners' responsibilities were limited to the pilotage service.

As explained earlier (vide p. 520), sec. 18 of the Terms of Union provided for the continuity of legislation and administration during the transition period.

On December 21, 1961, P.C. 1961-1843 proclaimed Botwood a public harbour pursuant to sec. 600 of the Canada Shipping Act and established its limits as follows (Ex. 1462(h)):

"All the waters of the Bay of Exploits south of a straight line drawn from Phillips Head to Lower Sandy Point".

The 1964 federal Act entitled "An Act to repeal certain Acts of the Province of Newfoundland respecting Harbours and Pilotage" (13 Eliz. II c. 33) contained a provision abrogating as of a date to be fixed by proclamation all the governing Newfoundland legislation concerning pilotage at outports. The pertinent section reads as follows:

"1. *An Act respecting Outport Pilots and Pilotage*, Chapter 179 of the Consolidated Statutes of Newfoundland 1916, and *The Outport Pilots and Pilotage Act*, Chapter 215 of the Revised Statutes of Newfoundland, 1952, and all amendments thereto and all orders, rules and regulations made thereunder are repealed."

On December 23, 1964, the Government arranged by a series of proclamations and orders for the pilotage service at Botwood to come under federal legislation. Apart from the two proclamations giving effect, *inter alia*, to sec. 1 of the 1964 Act effective December 31, 1964 (SOR/65-21), and making Part VI C.S.A. applicable to Newfoundland effective January 1, 1965 (SOR/65-22), the two following Orders were made concerning Botwood specifically:

- (a) an Order in Council made pursuant to secs. 324 and 326 C.S.A. creating under Part VI, effective January 1, 1965, the Botwood Pilotage District, fixing its limits and making the payment of dues compulsory (P.C. 1964-2013, Ex. 1462(d));
- (b) a further Order in Council made under sec. 325 C.S.A. appointing, effective January 1, 1965, the Botwood Pilotage Authority (P.C. 1964-2014, Ex. 1462(d)).

The Botwood legislation was completed when, on April 29, 1965, by P.C. 1965-791, the new District regulations made by the Pilotage Authority were approved (Ex. 268).

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of Botwood was created as aforesaid by P.C. 1964-2013 effective January 1, 1965. The Order in Council made the payment of pilotage dues compulsory and fixed the District limits to cover the same area as defined under the repealed legislation, namely:

“...to include therein all the navigable waters of the Bay of Exploits west and south of a line from Surgeon Cove Point to Waldron Cove Point;...”

By a separate Order in Council, P.C. 1964-2014, also effective January 1, 1965, the Governor General constituted the Pilotage Authority which continued the system of a local Commission and reappointed the three former Pilot Commissioners, Mr. E. P. Newman, Chairman, Mr. D. R. Butt and Mr. T. W. Antle members, and also appointed Mr. Antle Secretary-Treasurer pursuant to sec. 328 C.S.A. However, the Order in Council is silent as to his remuneration.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Shortly after their appointment, the Pilot Commissioners submitted on February 8, 1965, a new set of by-laws to replace the former ones that had been repealed as of December 31, 1964. This General By-law received approval by the Governor in Council on April 29, 1965, as aforesaid (P.C. 1965-791). The confirming order erroneously mentioned that it revoked the by-laws made pursuant to the Newfoundland Statute “Of Outport Pilots and Pilotage”, Chapter 179 of the Consolidated Statutes of Newfoundland 1916.

As stated earlier, these by-laws had already been revoked by Parliament through sec. 1 of the 1964 Act effective December 31, 1964, the date set in the proclamation.

The only amendment to the By-law so far (1969) occurred May 11, 1967, when by P.C. 1967-937 a new tariff was approved. The main features of this General By-law are:

- (a) It provides for a fully controlled pilotage service, the pilots being *de facto* employees of their Authority under the direction of the Secretary who attends to despatching. Their remuneration is a share of the earnings derived from the tariff, except the surcharge.
- (b) It provides for leave with pay and without pay: 21 days' annual leave with pay; leave without pay, which may be granted up to six months; leave because of disability through illness or injury for three months with pay, except when the injury occurred when on duty, in which case leave up to one year may be granted. The provision does not indicate whether in this case it would be with or without pay. According to the rules of interpretation, since in this case no mention is made in contrast to the specific mention in all other cases, it should be concluded that such leave should be without pay. This is obviously not the intention and it should be corrected. Furthermore, subsec. 21(3) provides that leave on account of sickness or injury may be granted with pay *at the discretion of the Authority*. It is considered, apart from the question of the legality of pooling (Part I, p. 249), that the amount of remuneration should never be left to be determined at the sole discretion of any individual but should be fully established in the regulations (Part I, p. 192).
- (c) The Secretary's salary is established at 7½ per cent of the gross receipts, (pilotage dues, surcharge, examination fees and licence fees) of the District.
- (d) The exemption to local and coastal traders is withdrawn for all vessels over 300 NRT, in other words the relative exemption of sec. 346(e) C.S.A. is retained only for steamships of dominion registry between 250 and 300 NRT, those under 250 enjoying an absolute statutory exemption under subsec. 346(f). The By-law does not provide under subsec. 346(c) an exemption for small foreign ships.
- (e) Regarding financial administration, the practice that had been established through the repealed regulations was retained. The District receipts are divided into two funds; the *pilots' pool* composed of the pilotage dues less the surcharge, and the Pilotage Authority's *Expense Fund* composed of the surcharge, examination and licence fees, fines and any interest from an unexpended balance. The first fund belongs entirely to the pilots and is their remuneration. The

second fund is used solely to cover the operating expenses of both the District and the service, including the acquisition, maintenance and operation of pilot vessels. The By-law does not provide for reimbursing the pilots for any other expenses they may incur.

- (f) It provides that the pilots are not to be otherwise employed during the navigation season. However, the term “navigation season” is not defined. This may cause difficulty since, as will be seen later, the port is kept open with the aid of icebreakers throughout the winter.
- (g) With regard to licensing it provides as a “transitory measure” for the recognition of those pilots who held a licence as of December 31, 1964, but contains no requirements for future pilots except those regarding age (between 21 and 60) physical, mental and moral fitness and passing an examination before a Board of Examiners on knowledge of the District and general marine knowledge. The first licence is probationary. Its duration as well as the remuneration of the pilot during that period are left to be decided by administrative decision of the Pilotage Authority (Part I, p. 268).
- (h) The By-law purports to give the Pilotage Authority judicial powers over the pilots for breaches of regulations (Part I, p. 400).
- (i) The tariff, as amended in 1967, provides rates for voyages and movages only, all subject to a surcharge. The rate for pilotage voyages is in the form of a scale based on net tonnage: a minimum charge of \$40 for vessels up to 300 NRT, plus \$5 per 100 tons up to 1,000 tons, and thereafter plus \$2.50 per 100 tons. Two movage rates are provided: \$15 for ships below 1,000 tons and \$25 for those over 1,000 tons. The surcharge is 50 per cent. There are no pilot boat, detention or cancellation charges. Only the amount of the rates was altered—the structure remained the same. The main change was the increase in the surcharge from 30 per cent to 50 per cent.
- (j) No Pilot Fund or Pension Fund is provided for.

2. HISTORY OF LEGISLATION

Botwood was proclaimed a Pilotage Port under the provisions of the Outport Pilots and Pilotage Act on August 24, 1909, effective March 1, 1910, and from that date became equivalent to a Pilotage District. Its first By-law was approved by the Governor in Council of Newfoundland on June 14, 1910 (Ex. 279). It was still in force at the time of Union with Canada and remained so until Newfoundland pilotage legislation was abrogated effective December 31, 1964. It was amended twice since Union, in 1951 and 1954, in both cases regarding tariff and exemptions.

This By-law was similar in content to the Humber Arm By-law which the Supreme Court of Newfoundland, in an *obiter dictum*, considered ultra vires (Dyke v Pilot Commissioners of Humber Arm, vide Part I, p. 282) because it provided for the control of the pilotage service by the Pilotage Authority although this was not permitted either under the Outport Pilotage statute or Part VI of the Canada Shipping Act.

The only rates were for voyages which were devised according to a scale of tonnage, plus a 50 per cent surcharge, a rate structure which has since been retained. The By-law did not provide for a moorage rate. Exemptions were the same as for St. John's with the same preferential treatment for exempt ships by granting them a 50 per cent reduction when they took pilots (p. 527). It established a seaward pilot limit by prescribing that pilots "may go to sea a distance of one mile and a half if necessary", and required that a pilot station be maintained on Exploits Island at the Notre Dame Bay seaward entrance of the District, where the pilots were to remain throughout the navigation season, except when performing pilotage. It was the Pilot Commissioners' responsibility to provide the pilots with two good pilot boats and to keep them in good repair, the cost being part of the operating expenses of the District toward which the 50 per cent surcharge on the voyage rates was applied. The By-law did not refer to the qualifications of pilots.

The scale of rates was amended in 1951 (P.C. 6456 of December 4, 1951) and, at the same time, the surcharge was reduced to 10 per cent. The exemptions were extended to Canadian vessels. The exempt vessels continued to enjoy a 50 per cent reduction if they employed a pilot, and coastal vessels were required to pay half pilotage if they entered or left the port of Botwood with a pilot from another District. The amendment further introduced a moorage charge which was not subject to compulsory payment. The 50 per cent rebate for exempt vessels did not apply if they entered or left Botwood with a pilot from another port on board.

The scale of rates and the exemptions were again revised in 1954 (P.C. 1954-720). The 10 per cent surcharge was retained. It is reported that in December, 1959, the surcharge was raised to 50 per cent and reduced to 30 per cent on January 1, 1962, but neither change was made the subject of a By-law amendment.

The 1965 General By-law, as amended, now in force retains the characteristics of the 1910 By-law, as amended, as well as the rate structure which remains unchanged.

Chapter B

BRIEFS

The only brief received was submitted by the Botwood Pilotage Commission (Ex. 267) which recommended as follows (references in brackets show where each recommendation is dealt with in the Report):

- "1. The provision of a Pension Scheme for the Botwood pilots and advice as to the best method of instituting a pension scheme". (Part I, C.10, and General Recommendation No. 39).
- "2. Installation of a light and radio beacon on Funk Island". (p. 599).
- "3. Cape John Gull Island radio beacon to be put on a 12 month operational basis". (p. 599).

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The Pilotage District of Botwood comprises the waters of the western arm of the Bay of Exploits and the harbour of Botwood.

The Bay of Exploits, located on the southeast part of Notre Dame Bay, is divided by numerous islands into three main arms which lead to various bays and arms at its head. The eastern arm formerly comprised the now defunct Pilotage Port of Lewisporte (*vide*. Subsec. III).

The western arm is entered through Ship Run between Northern Head on the mainland and Exploits Islands. The seaward limit of the Pilotage District lies at the narrowest part of the entrance (16 cables) between Waldron Cove Point on the mainland and Surgeon Cove Point on southwestern Exploits Island.

The approach to the harbour of Botwood is from the deep, open waters of Notre Dame Bay by the western entrance and from thence within the District for about 20 miles through the deep, wide channel of the western arm (Ship Run) to the seaward limits of the harbour of Botwood, defined as a line between Phillips Head and Lower Sandy Point, and where the channel narrows to three-quarters of a mile, with its deep portion reduced in width to about half a mile by the existence of a sand bar with a patch of $5\frac{1}{4}$ fathoms over it. This presents the only significant navigational hazard for deep draught vessels in the District which otherwise is free from obstruction.

From thence, passage for five miles is in deep, open water within the harbour to the wharves.

The pilots do not consider that the currents in the channel constitute a danger since their maximum velocity on both flood and ebb tides is only two knots and they flow parallel to the channel. The currents inside the harbour are mostly tidal and create berthing difficulties at times because they run parallel to the wharves at a maximum rate of four to five knots on the ebb tide and two knots on the flood.

Now that most vessels are equipped with radar, fog no longer has the same effect on their movements and traffic is very seldom halted because of

it. Ice does not present a major hazard. However, when the arctic ice flows down about the end of February it may accumulate near the District seaward entrance and bring traffic to a standstill unless an icebreaker is available.

Owing to the extreme depth of water, it is difficult, and sometimes impossible, for a vessel to anchor close to the channel. Since the coast is steep, anchorages are few.

Navigation used to cease during the winter but Botwood may now be considered a year round port due to improved icebreaker service, modern communications and the aerial surveys carried out by the Federal Government and private interests.

Aids to navigation are adequate in the opinion of the pilots, except that they would like to see the light on Lower Sandy Point moved to Phillips Head. Between the boarding station and Botwood there were six lighthouses and five unwatched lights giving satisfaction in 1963.

The Botwood Pilotage Commission made recommendations regarding aids to navigation along the approach routes to Notre Dame Bay and thence into the District. First, they recommended that the radio beacon situated at Cape John Gull Island on the northwest tip of Notre Dame Bay be put on a twelve-month operational basis and not closed down in the winter months as was then the practice; second, they recommended that a light and radio beacon be installed on Funk Island, the most seaward point of land northeast of Notre Dame Bay, in order to simplify the approach to Notre Dame Bay for ships not using the inside passage.

Marine Services of the Department of Transport in a letter dated March 6, 1969 (Ex. 1463 (o)) reported on the present situation regarding these aids to navigation:

"The three aids on which you requested information were the Funk Island Light, Gull Island Radio Beacon, and Sandy Point Light.

There have been no changes in any of these aids in recent years. Planning for the Funk Island Light is dependent on a hydrographic survey which will be done by another Department. This project is still in the programme although not of high priority.

Funk Island lies 95 miles outside the pilotage station for Botwood pilots.

Gull Island Radio Beacon is operated during the navigation season. If the season is now year-round then changes are indicated. Gull Island lies 30 miles outside the station for Botwood pilots.

Sandy Point is in pilotage waters and the pilots have a legitimate interest in this aid. We have received no recommendation from the pilots to relocate the aid and an inspection of the chart failed to reveal any advantage in doing so. In fact, the advantage seems to be with the present location. Before incurring expense in moving the light, the pilots would be required to demonstrate the advantage to be gained.

In the normal departmental procedure of steadily improving the service the light on Funk Island has been under study for a considerable time. The islands are the breeding ground of a rare species of sea birds and special arrangements were necessary to preserve wild life. We now have permission to use an off lying rock as a site for the proposed light which will eventually be established."

Botwood, the only public port in the District, is situated on the north-western side of Peter Arm at the head of the western arm of the Bay. It is the shipping port for the pulp and paper products of the Anglo Newfoundland Development Company Limited of Grand Falls as well as the ore concentrates of the American Smelting and Refining Company at Buchans and Botwood. Grand Falls is situated 22 miles from Botwood and is connected by a private railroad, while Buchans, about 90 miles distant, is served by a railway line of the Canadian National Railways and the private lines of the mine and paper companies. All companies have facilities for discharging oil from tankers. The port is also used as a freight distributing centre for goods shipped to central Newfoundland. Botwood is a Port of Entry.

(1) MARITIME AND PILOTAGE TRAFFIC

Tankers, ore carriers, vessels with general cargo and ships calling for pulp and paper products visit Botwood. The volume of traffic varies with the activities of the industries in the area.

The following table, compiled from D.B.S. statistics of ships of 250 NRT and over (Ex. 1483) and from statistics contained in the District annual reports (Ex. 281), shows the importance of general and pilotage traffic and the aggregate workload of the pilots (for workload purposes, one ship piloted means two trips).

COMPARISON BETWEEN D.B.S. AND PILOTAGE STATISTICS
FOR BOTWOOD, NFLD.*

Year	Arrivals of Vessels 250 N.R.T. and over		No. of Pilots	Vessels Paying Pilotage Dues	
	No. of Ships	Average N.R.T.		No. of Ships	Average N.R.T.
1958.....	263	1,001.8	4	—	—
1959.....	107	2,562.1	3	92	2,823.2
1960.....	106	3,080.8	3	99	3,453.0
1961.....	95	2,674.2	3	96	2,671.4
1962.....	93	2,901.6	3	102	2,958.8
1963.....	92	3,234.8	3	100	3,095.9
1964.....	108	2,795.5	3	118	2,632.0
1965.....	102	3,183.1	3	108	3,217.4
1966.....	109	3,129.3	3	109	3,121.5
1967.....	116	2,988.0	3	113	3,169.5

*D.B.S. does not include pilotage information in its statistics.

These statistics indicate that, since 1959, most vessels have been fairly large and their number has remained steady. There are three reasons for this: the harbour and its approaches can accommodate very large ships; most vessels are bulk carriers (imports of oil and exports of pulp and paper products and ore concentrates); and the export and import needs of the region have remained relatively stable.

The larger vessels, although regular traders, all employ pilots. According to evidence given by the pilots themselves, all vessels use their services, except on the rare occasions when a pilot is not available. This is borne out from information contained in the pilots' logbook, which the Commission examined. From 1958 to 1962, the maximum number of times the services of pilots were dispensed with by non-exempt ships occurred in 1960, i.e., 14 trips out of a total of 215, or 6.5 per cent. This is a significant contrast to the situation prevailing in the other Newfoundland Districts. The compulsory payment of dues may be a factor but it would appear that it is mainly due to the nature of the trade which requires the employment of larger ships at Botwood.

2. ORGANIZATION

The function of Pilotage Authority is performed by a Board of three Pilot Commissioners recruited locally. The tenure of office is stable; the respective appointments of the present Commissioners date from 1958 and 1959. They were all continued in office when the District was reorganized under Part VI C.S.A. (p. 593). They are all business men conversant with the shipping industry. At the time of the Commission's hearing, the Chairman, Mr. E.P. Newman, was a business man and also the Harbour Master, Mr. D.R. Butt worked for a steamship agent in Botwood and Mr. T.W. Antle, the Secretary-Treasurer, was General Shipping Superintendent, Anglo Newfoundland Development Company.

The main issues the Pilot Commissioners had to face in recent years were reorganizing the District under the Canada Shipping Act, increasing the pilots' earnings and improving pilot boat service and communications between Botwood and the seaward boarding station. They have shown a keen interest in their function and the District is administered efficiently.

It appears that their most difficult task, at least since 1959, has been to find the funds required to operate the District efficiently (p. 610). As for providing the District with the necessary regulations under Part VI C.S.A., the Department of Transport took the initiative and sent the Botwood Pilotage Commission a draft of proposed regulations. An exchange of correspondence followed. The regulations were still in the drafting stage when the Commission sat in Newfoundland, the problem being retention in the regulations made under Part VI C.S.A. of the desirable practices and customs that had developed under the legislation about to be repealed. An

agreement had been reached when Part VI was proclaimed. The new regulations were adopted by the Pilotage Authority February 8, 1965, and became law when sanctioned by the Governor in Council April 29, 1965 (pp. 593-595). (Botwood, p. 3 to 6)).

Despite the text of the regulations, the function of the Secretary-Treasurer is mostly clerical. He does not actually take charge of despatching—the pilots themselves make the assignments. This procedure is particularly appropriate in view of their small number and the fact that one of them normally mans the pilot vessel.

The Secretary attends the Pilotage Authority's meetings and keeps records of the proceedings. Meetings are held at irregular intervals as required. His remuneration which, up to then, had been 5 per cent of the gross receipts of the District was raised to 7½ per cent at the time of the reorganization under Part VI C.S.A. This remuneration is paid out of the Pilotage Authority's Expense Fund.

In addition, the Secretary attends to the financial administration, collects the dues (except those earned from movages and from the unofficial berthing and unberthing charges which are collected and handled by the pilots themselves) and keeps records of all information necessary for the operation of the District. The record book is divided into two parts: the first part contains the date of arrival of each vessel, name, invoice number, net and gross tonnage, pilotage voyage fees and the surcharge, referred to as the "service charge"; the second part contains the bookkeeping entries.

For their own information, the pilots keep their records, as is the custom in all Newfoundland Districts. These show date of arrival of each vessel, her name, name of the pilot and sailing date.

3. PILOTS

(1) RECRUITING AND QUALIFICATIONS OF PILOTS

Prior to 1958, there were four pilots; they were reduced to three that year by the resignation of an elderly pilot. This reduction has meant improved earnings for the three remaining pilots without an increase in pilotage rates.

Neither before nor since Part VI C.S.A. came into force have the regulations contained any professional requirements for pilot candidates. Provided they are physically fit and of good character and pass an examination on local and general marine knowledge, they may be licensed. Formerly, the examination, as for St. John's, was held before the Examiner of Masters and mates in St. John's. The By-law now provides for the examination to be held before a Board of Examiners appointed by the Authority.

It had not been the practice for the former Pilotage Authority to issue pilot licences. The first licences were issued in 1961 at the request of the pilots. The licences so issued contained a restriction to the effect that they

could be withdrawn at any time at the discretion of the Botwood Pilotage Authority. This limitation was in conformity with the provisions of the Outport Pilotage statute (sec. 4) which left the duration of the pilots' licences at the entire discretion of the Pilotage Authority. Such a restriction is no longer valid under Part VI C.S.A. and, since the regulations contain no restriction, licences are now permanent (Part I, p. 264).

At the time of the Commission's hearing in 1963, the senior pilot, who had been engaged in piloting since 1937, held a temporary Master's certificate. His experience was obtained in fishing vessels under sail for four or five years. Apart from being a pilot, he had served since 1960 as Master of a small icebreaker owned by Montreal Shipping Limited and stationed at Botwood. This icebreaker operated in the port of Botwood, in Exploits River and in the channel whenever ice was a hazard to navigation between early December and middle or late April.

The second pilot had been engaged in that profession for 18 years. His previous sea experience was limited to small boats in local waters. Although he did not serve any apprenticeship, he stated that he had had no difficulty handling large steamships.

None of the pilots had any formal training of any kind in large steamships. Their experience was gained after they became pilots.

For the period 1960 to 1967, no casualties occurred or were reported in Botwood. Two groundings which occurred several years previously were mentioned. A pilot was on board each vessel. The cause in one instance was fog, and in the other the anchor dragged. No damage was sustained in either case.

Discipline has never been a problem in Botwood and there is no record of disciplinary action.

(2) WORKING CONDITIONS AND PILOTS' WORKLOAD

On account of the concept of the pilot's function inherited from the distant past, the statistics on the pilots' workload and their pilotage revenues are incomplete and can not be compared with those of other Districts.

The official pilotage work of the pilots is considered to be limited to navigating vessels in and out of the District; this practice had no doubt been adopted on account of the lack of formal qualifications of the pilots in shiphandling.

The custom has developed in Botwood that the pilot's work is considered completed when the vessel arrives off her berth, and berthing or unberthing are not considered part of his assignment. The Master of the vessel is left free to perform these operations himself but the pilot offers his services for an extra remuneration amounting to \$20. This is considered a private agreement between the Master and the pilot.

Similarly, despite the fact that movage rates have now long been provided in the tariff and that compulsory payment has applied since 1965, Masters are still left free to move their vessels within the harbour without being called upon to pay the movage fees payable under the compulsory system. However, the pilots make themselves available; any movages they perform are unofficial and their fees do not form part of the District revenue.

It is reported that there are very few Masters who do not avail themselves of the services offered by the pilots for berthing, unberthing and movages. Canadian lake vessels and Canadian tankers trading for Golden Eagle Refining Co. Ltd., are exceptions.

The graph, *Appendix A(1)*, compiled from the pilots' log-book shows the number of trips, movages for which dues were paid and their aggregate number on a monthly basis for the period 1960-1964. It indicates a fairly even distribution of pilotage workload throughout the normal navigation season, from May to December, although there are still a substantial number in January, as might be expected with the type of traffic involved. However, traffic is greatly reduced in February, March and April.

Before the pilot station was moved to Govers Harbour, a normal inward or outward trip from Surgeon Cove to Botwood averaged approximately two hours, transportation by pilot vessel from Botwood to the seaward station took about four hours and the round trip for the pilot roughly six hours. This has now been considerably reduced since the pilotage trip has been shortened by about one third and the pilots can now commute between Botwood and the pilot station by road.

COMMENTS

The Secretary-Treasurer was of the opinion that the service could be operated with two pilots only, provided the boatman could occasionally serve as a pilot. Even assuming that the annual expectancy of 100 to 150 arrivals all took place during the eight-month normal navigation season, the monthly average per pilot, would be 4 to 6 arrivals, i.e., 8 to 12 trips.

This local practice of not considering berthing, unberthing or movages as official duties of the pilots is not permissible under the present legislation and the pilots are committing a statutory offence under sec. 372 C.S.A. when they ask an extra \$20 for berthing or unberthing a ship when engaged in piloting her inward or outward. Sec. 361 C.S.A. makes it an obligation for the pilot to act as such until the ship is "finally anchored or safely moored". Berthing and unberthing are part of inward and outward voyages.

Futhermore, the compulsory payment obligation applies to all movements of ships, including movages, and, therefore, under the present legislation the Pilotage Authority has no discretion whether to apply it or not (Part I, p. 217).

There is no objection if the voyage charge is broken down into two components: a trip charge and a berthing charge. This, however, would serve a useful purpose only in the case of exempt ships employing a pilot for the inward or outward trip but dispensing with his services for berthing or unberthing. If the practice is to be extended to all vessels, the compulsory payment obligation should be abolished first.

4. PILOTAGE OPERATIONS

(1) BOARDING AREA AND PILOT STATION

The pilots used to embark in the sheltered waters of the entrance to the inlet at the District seaward limit. The pilot station was relocated in 1965 and the boarding area is now off Govers Harbour.

The pilot station used to be maintained by the Pilotage Authority on the east side of the entrance to the inlet at Surgeon Cove on southwestern Exploits Island where the pilot vessel moorings were also located. Prior to 1960, the pilots lived at Exploits, a settlement on Exploits Islands, and commuted to Surgeon Cove pilot station by foot path or boat as necessary. The Exploits settlement, in common with many other small island communities of Newfoundland, is rapidly becoming depopulated and the pilots have moved their living quarters to Botwood. The pilot vessel was then used as required to transport pilots between Botwood and the pilot station.

The station was not manned regularly but most of the time a pilot was at the station on standby. However, if no ship was expected or about to leave, the station might be unattended for a few days. Occasionally, a pilot would stay at the station for a number of days. There were no set watches. This station had been in existence for over 50 years.

In their brief, the Pilot Commissioners indicated that it was their intention to move the station from the island to the mainland on the west side of the inlet when the road which was being built to reach the small settlements on the northwest side of Exploits Bay running through, *inter alia*, "Point au Bay" and on to Fortune Harbour was completed. This has now been done and the pilot station has been relocated at Govers Harbour approximately 13 miles inland from the seaward limit of the District (Waldron Cove). The area contains two of the few good anchorages in the inlet.

The pilots now commute by car between Botwood and the pilot station to suit the arrival and departure times of vessels. Vessels now sail into the sheltered waters of Ship Run and embark their pilots off Govers Harbour. Pilots are no longer exposed to the hazards of boarding vessels in heavy seas nor are vessels required to heave to on an exposed coastline to embark a pilot. It is reported that both pilots and Masters are pleased with the new arrangements Ex. 1463(m)).

(2) PILOT VESSEL SERVICE

Pilot vessel service is now operated from a small wharf which the Pilotage Authority built at Govers Harbour near the pilot station. The pilot vessel belongs to, and is maintained by, the Authority and is normally manned by the pilots themselves, but when one is not available a boatman is hired and paid by the Authority out of its own fund.

The vessel now in use (1969) is 22 feet long, 6 feet wide, powered by a gas engine, equipped with a ship-to-shore radiotelephone and carries standard equipment.

She was built in 1960 to replace one fifty years old, and was paid for out of the Pilotage Authority's Expense Fund. Construction costs, excluding radiotelephone equipment, were approximately \$3,000. She is not equipped with radar or echo sounding device but is sheathed with greenheart for ice protection.

Unlike other Districts there is no pilot boat charge, because the surcharge on pilotage rates was instituted specially to cover the expense of maintaining the pilot vessel service as well as for other operating expenses of the District.

(3) DESPATCHING

Despatching is quite informal. The pilots themselves man the radiotelephone at the station and answer all calls. The normal procedure for a vessel bound to Botwood and requiring a pilot is to send a message to the Pilotage Authority through Cabbage Harbour Head lighthouse. There is no set period of advance notice.

5. PILOTS' REMUNERATION AND TARIFF

Remuneration

As for St. John's, the tariff divides the pilotage dues into those that belong to the pilots as their remuneration and those that belong to the Pilotage Authority for the exclusive purpose of meeting the operating expenses of the District. The pilots' remuneration is an equal share of the pool which consists of the pilotage dues collected less the surcharge. However, the official figures showing the share of each pilot do not correspond to their actual net earnings since they merely refer to the pilot's share of the aggregate revenues derived from inward and outward pilotage which, together

with the surcharge, are the only pilotage dues the Secretary collects. These dues (except the surcharge) are fully divided into equal shares by the Secretary and paid to the pilots twice a month. The Secretary's percentage, although calculated on total receipts, is taken from the Expense Fund.

With respect to the unofficial berthing and unberthing charges and to the moorage fees, a private pooling arrangement has always existed. The pilots make their own collection and share these fees equally, usually every month.

The pilots are also employed in the icebreaker operated by Montreal Shipping Limited during the winter. In that respect, the three of them together received for instance, \$6,000 in 1961 and \$5,100 in 1962.

The practice of calculating the official pilots' earnings solely on the fees they earn when piloting ships inward or outward results in a deceptively low figure being shown as their income. It is not possible to ascertain with accuracy what additional remuneration they make from berthing and unberthing charges since not all, but most, vessels employ them for that purpose. There are also no official statistics of moorages performed (these are reported as *nil* on the official financial statements) but according to the pilots' log-book, there are between 30 and 40 per year. It is believed this extra revenue would increase their official income by at least 30 per cent.

With these reservations, each pilot's official remuneration prior to income tax deductions is reported to have been as shown in the following table (the figures are an average share of official net earnings, i.e., the pool divided by 3). They generally correspond to the actual earnings of each of the three pilots but occasionally the actual revenue of two of them would be higher because the third was not always available, or there was a vacancy which was not immediately filled.

PILOT'S AVERAGE OFFICIAL REMUNERATION

Year		Year	
1959.....	\$ 3,273.25	1964.....	\$ 4,107.27
1960.....	3,953.38	1965.....	4,269.52
1961.....	3,060.58	1966.....	4,209.92
1962.....	3,565.67	1967.....	4,793.50
1963.....	3,826.17		

The slight increase up to 1966 is due to the increase in the tonnage of ships. In 1967, the rates were raised slightly.

Apart from the payment by the Pilotage Authority as District operating expenses of all the pilots' expenses for providing service, their only fringe benefit is the Workmen's Compensation coverage they have enjoyed since 1960. The premiums are treated as District operating expenses and, therefore, are provided free of charge to the pilots.

Workmen's Compensation benefits were obtained by the Botwood Pilotage Commission in an endeavour to make their pilots' working conditions more attractive. The subject was first broached by the pilots themselves. As in the St. John's District, the Pilotage Authority was named the employer for the purposes of Workmen's Compensation. The boatman is also covered when employed by the Authority.

Since the Canada Pension Plan was introduced, the Pilotage Authority treats its pilots as employees and pays the employer's contribution of 1.8 per cent of each pilot's official earnings minus the first \$600.00 exemption, which amounted to \$194.94 in 1966 and \$237.24 in 1967.

The Authority also endeavoured to obtain Unemployment Insurance benefits for its pilots but was unsuccessful. However, such benefits were extended to the boatman.

The pilots incur no personal expenses while providing service. They are reimbursed all their transportation expenses, which have been quite substantial since the pilot station was relocated in 1965 and can now be reached by land from Botwood.

Tariff

The District has retained the tariff structure that was copied from the tariff in force at St. John's at the time the pilotage organization first came under pilotage legislation in 1910. Comments made in this regard for St. John's apply here (pp. 556-557).

A movage is officially recognized in the tariff as one of the services the pilots may officially render. Therefore, it is the duty and responsibility of the Secretary of the Pilotage Authority to keep records of movages, to collect movage charges and credit them to the Pilotage Fund.

The unofficial berthing and unberthing charge is illegal and its collection by the pilots should be discontinued. Since berthing and unberthing are part of the pilots' duty when piloting a vessel inward or outward, the voyage rate should be increased if it is considered too low.

6. FINANCIAL ADMINISTRATION

Although the By-law requires the Secretary to attend to the collection of all the pilotage dues and to deposit all pilotage earnings and other District receipts in a bank account called the *Botwood Pilotage Fund*, in practice, as seen earlier, he follows the former procedure—despite the regulations—and concerns himself only with those dues derived from official inward and outward trip charges and the surcharge. Therefore, none of the records kept by the Botwood Pilotage Authority shows the receipts yielded by the movages performed by the pilots, nor the extra remuneration they obtain from berthing and unberthing vessels during inward or outward trips. These fees are collected and pooled privately by the pilots themselves.

The Secretary prepares the invoices for inward and outward pilotage, including the surcharge, on the basis of arrivals and departures and from information on tonnage obtained from the agents. Source forms are not used. The Secretary reported he never had any difficulty making collections.

In accordance with the practice modelled on the St. John's system, there are two separate funds but they are segregated only through bookkeeping entries in the Pilotage Fund:

- (a) *pool money*;
- (b) the Pilotage Authority's *Expense Fund*.

All the money collected by the Secretary is deposited in the bank to the credit of the Pilotage Fund. Twice a month, the Secretary establishes the gross share of the pilots by dividing equally the dues collected from inward and outward trips and, after making the required individual deductions for income tax and Canada Pension Plan, pays each pilot his net share. What remains comprises the Expense Fund.

Each remittance to a pilot includes a statement showing the details of the pool being shared, i.e., listing the bills collected with the names of the vessels, net and gross tonnage, dates piloted, gross share and personal deductions. Apart from this document and the T4-form at the end of the year, the pilots receive no financial statement from the Authority.

Unlike the practice in St. John's, the surplus, i.e., the Expense Fund, is neither invested nor deposited in savings accounts. All money handled by the Pilotage Authority is shown in the current bank account, i.e., the Pilotage Fund (Ex. 1463(t)).

The financial statements which appear on the official Pilotage District annual reports are in the form of receipts and disbursements of both the pool and the Expense Fund without segregation and are restricted to that part of the pilotage dues collected by the Authority, but do not show the interest, if any, on the accumulated unexpended surpluses in the bank accounts or the total accumulated assets in the Expense Fund.

The following comparative table shows the details of the receipts and expenditures of the Pilotage Fund, based on the information contained in the annual reports (Ex. 281) for the years 1965, 1966 and 1967; the operational deficits were met out of the accumulated surpluses of the Expense Fund.

	1965	1966	1967
<i>Receipts</i>			
Pilotage dues: Trips*.....	\$12,808.56	\$12,629.76	\$14,380.50
Movages†.....	—	—	—
Surcharge.....	3,827.75	3,789.13	6,688.42
Other revenue.....	not shown	not shown	not shown
	16,636.31	16,418.89	21,068.92
Less: refund of overcharge.....	119.93	—	—
	\$16,516.38	\$16,418.89	\$21,068.92
<i>Expenditures</i>			
Pilots' remuneration‡.....	\$12,808.56	\$12,629.76	\$14,380.50
Secretary's remuneration.....	1,247.70	1,185.32	1,674.38
Boatman's salary§.....	916.56	472.11	680.80
Workmen's Compensation.....	369.65	414.24	411.39
Canada Pension Plan**.....	247.85	203.82	526.33
New pilot station.....	2,605.47	—	—
Boat and station operations.....	1,015.87	807.81	1,319.88
Travelling expenses of pilots.....	625.75	1,341.00	1,245.81
Printing and publications.....	191.54	—	18.93
Sundries.....	37.17	36.84	10.00
	20,066.12	17,090.90	20,268.02
Operating surplus or deficit.....	—3,549.74	—672.01	800.90
	\$16,516.38	\$16,418.89	\$21,068.92

SOURCE OF INFORMATION: District Annual Reports, Exhibit 281.

*Pilotage dues for trips do not include the \$20 unofficial berthing or unberthing charge.

†Movage fees are not entered in the Pilotage Fund.

‡Including income tax and Canada Pension Plan participation.

§After income tax and Canada Pension Plan deductions.

**Pilotage Authority's share for pilots and boatman, including income tax and Canada Pension Plan deductions for boatman.

According to the practice followed before Part VI C.S.A. came into force, the Pilotage Authority kept a fund of its own (referred to here as the Pilotage Authority's Expense Fund) for the purpose of defraying the District and service operating expenses, and also to constitute a reserve to finance expected capital expenditures (as to legality under Part VI C.S.A., vide p. 562).

The Pilotage Authority pays all operating expenses out of this fund, including the pilots' operating expenses, their Workmen's Compensation coverage and the Pilotage Authority's share of the Canada Pension Plan contribution.

In 1959, the Pilotage Commission was faced with the problem of renewing its pilot boat and repairing the building used as a pilot station at Surgeon Cove. Representations were made to the Department of Transport in the hope of obtaining Government assistance but without success. The Department of Transport informed the Pilotage Commission that no financial assistance would be forthcoming from the Federal Government and suggested that a bank loan be obtained for the purchase of a new boat and that an adjustment in the tariff be made in order to reimburse this loan.

On the basis of that advice, the Pilotage Commission increased the surcharge from 10 to 50 per cent in order to accumulate the necessary funds. This increase was never sanctioned by a By-law amendment but was collected nevertheless. It appears from the Department of Transport Auditor's report, dated May 15, 1961 (Ex. 248) that the Pilotage Authority endeavoured to have the surcharge properly approved but this was not done. The surcharge remained at 50 per cent from December, 1959, to January 1, 1962, when it was reduced to 30 per cent. However, the surcharge was regularly established with the adoption of the 1965 By-law. It was then fixed at 30 per cent and later raised to 50 per cent by a By-law amendment in 1967.

The following figures show the unexpended balance of the Expense Fund as of Dec. 31, 1964-1967 (Ex. 1463(t)):

1964	\$6,338.98	1967	2,633.99
1965	4,120.38	1968	4,856.03
1966	2,019.08		

These figures are the actual bank balance as of December 31 and, therefore, do not take into account outstanding cheques.

7. PENSION FUND

The Pilotage Commission had studied the question of a pension for their pilots and had endeavoured to devise ways and means of instituting some form of pension plan, but without success. It considered increasing the pilotage rates in order to raise the pilots' remuneration and thus provide a pension scheme. However, after inquiring about pilotage dues applicable in other ports of the Atlantic Provinces, the Pilot Commissioners felt that an increase in the rates could not be justified.

One of the recommendations in their brief to this Commission was that their pilots be provided with pension protection, the absence of which they considered a weakness in the system.

This Commission's views on the matter are expressed in Part I, C.10, and General Recommendation No. 39, p. 581.

Chapter D

For Recommendations affecting Botwood vide Subsection VI.

Chapter E

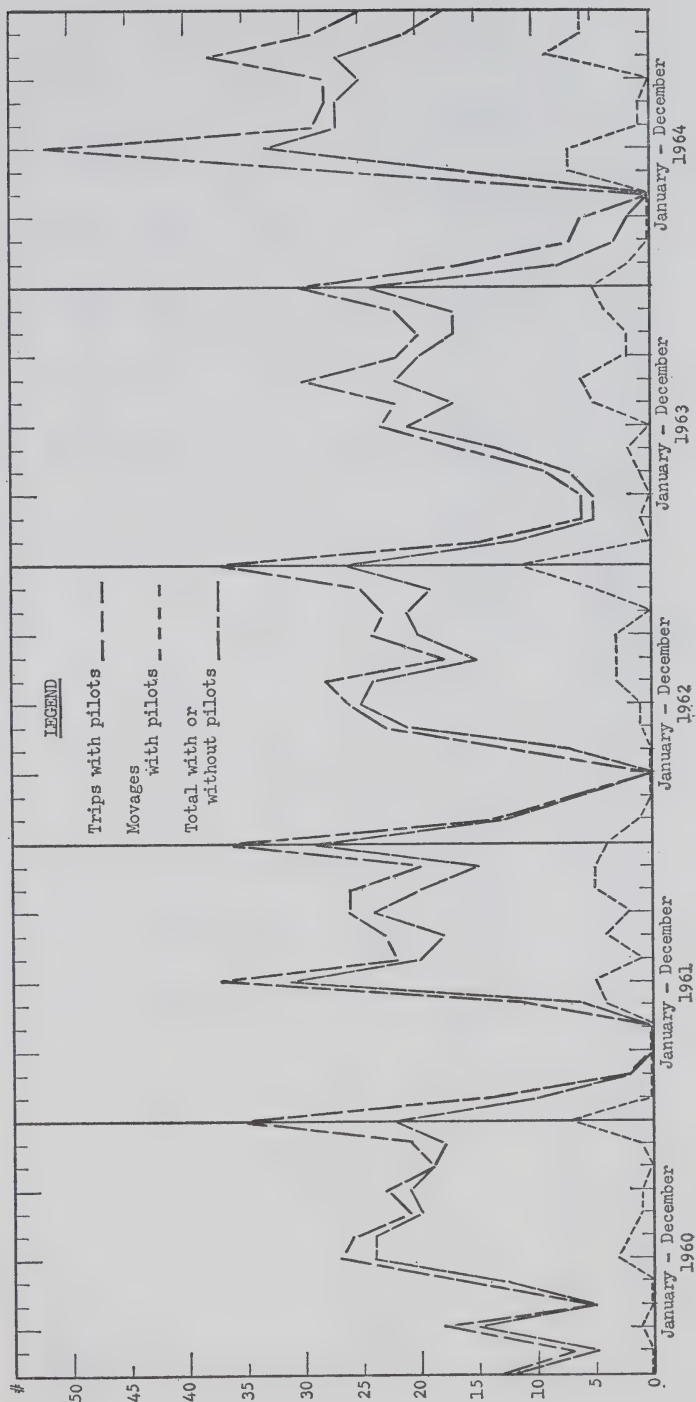
APPENDICES

APPENDIX A

- (1) *Graph*—Monthly Volume of Traffic in the Pilotage District of Botwood, NFLD., during the Five-Year Period 1960-1964.
- (2) *Table*—Monthly Volume of Traffic in the Pilotage District of Botwood, NFLD., during the Five-Year Period 1960-1964.

Appendix A (1)

MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF BOTWOOD, NFLD.,
DURING THE FIVE-YEAR PERIOD 1960-1964



Appendix A (2)

MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF BOTWOOD, NFLD.,
DURING THE FIVE-YEAR PERIOD 1960-1964

Month	Trips in and out with Pilots					Movages with Pilots					Total Traffic (trips in and out, movages) with and without Pilots				
	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964
January.....	12	10	13	12	8	0	0	1	0	2	13	15	14	15	17
February.....	5	2	0	5	3	0	0	0	1	0	7	2	0	6	7
March.....	15	0	0	5	2	1	0	0	0	0	18	0	0	6	6
April.....	5	0	7	7	0	0	0	0	1	0	5	0	7	9	0
May.....	13	6	21	13	16	0	4	1	2	7	14	11	23	16	25
June.....	24	31	25	21	33	3	5	1	0	7	27	37	26	23	52
July.....	24	20	24	17	27	2	1	3	5	1	26	22	28	22	29
August.....	20	18	15	22	27	1	4	3	6	1	21	23	18	30	28
September.....	22	24	20	20	25	1	2	3	2	0	23	26	24	22	28
October.....	19	20	22	17	27	0	5	0	2	9	19	26	22	20	38
November.....	18	15	19	17	21	1	5	5	4	6	21	20	25	22	29
December.....	22	29	26	24	18	7	4	11	5	6	35	36	37	30	25
TOTAL.....	199	175	192	180	207	16	30	28	28	39	229	218	224	221	284
AVERAGE.....	16.6	14.6	16.0	15.0	17.3	1.3	2.5	2.3	2.3	3.3	19.1	18.2	18.7	18.4	23.7

SOURCE OF INFORMATION: Exhibit 1462 (s) (4).

Subsection III

PORT OF LEWISPORTE, NFLD.

GENERAL SUMMARY

At the time of Union in 1949, Lewisporte was one of the four remaining outports still operating as a *Pilotage Port* under the Newfoundland Outport Pilotage legislation. When preparations were under way for the reorganization of these Pilotage Ports under Part VI C.S.A., it was decided by the Department of Transport, after consultation with the local authorities, that public control over pilotage at Lewisporte should be allowed to lapse. This occurred when the Outport Pilotage legislation was repealed by sec. 1 of the 1964 federal statute effective December 31, 1964 (vide p. 592).

The town of Lewisporte is situated on the west side of Burnt Bay at the head of the eastern arm of the Bay of Exploits. The eastern arm is entered from Notre Dame Bay through a wide, deep channel between Black Island and New World Island which continues southward through unimpeded waters for 17 miles to Mussel Bed Rocks, some 5 miles from Lewisporte. Shortly thereafter the channel narrows to about 2 cables between Cat and Freak Islands, but remains deep all the way to Lewisporte. There are no major navigational hazards and a vessel following the middle of the channel is in no danger. However, great caution is needed when approaching and passing Mussel Bed Rocks and also when passing between Cat and Freak Islands, all unmarked by lights or buoys. Due east from Cat Island lies Seal Rock (1 foot high but also unmarked by a light or buoy) with an intervening channel 2 cables wide. Due to the danger in this area, vessels generally use the passage between Cat and Freak Islands.

Navigation is conducted on a twenty-four hour basis. The pilot testified that he had navigated without difficulty at night and in fog with the aid of radar. Tides and currents are mild and present no difficulties. The harbour at Lewisporte is open all year round. Ice in the channel occasionally creates a hazard but it can be overcome with the aid of an icebreaker from St. John's (there is none locally). Lewisporte harbour is deep with good anchorages and is a Port of Entry.

The absence of serious navigational hazards and the fact that most ships calling at Lewisporte are of small size explains why pilotage is rarely required. No artificial need for the service was ever created, since the compulsory payment of pilotage dues was never imposed.

Aids to navigation are few. In this regard, the pilot stated in his evidence that guiding lights at Mussel Bed Rocks, Cat and Freak Islands and Seal Rock would greatly enhance navigation. Indeed, it may be surmised that if this were done, even a stranger to the area could navigate with confidence.

Lewisporte serves the limited needs of the immediate region. The principal export is fish; petroleum products and general merchandise are imported.

Maritime traffic consists mostly of small and medium-sized cargo vessels and tankers, with an occasional large tanker from 5,000 to 18,000 GRT.

The following table based on D.B.S. statistics of arrivals of vessels of 250 NRT and over (Ex. 1483) and from the Pilotage Port statistics up to 1964 (Ex. 261) shows the extent and importance of maritime traffic and the limited use made of the pilotage service. This table indicates that most vessels calling at Lewisporte are small and that a pilot is employed by a few larger vessels only.

COMPARISON BETWEEN D.B.S. AND PILOTAGE STATISTICS
FOR LEWISPORTE, NFLD.*

Year	Arrivals of Vessels 250 N.R.T. and over		No. of Pilots	Vessels Paying Pilotage Dues	
	No. of Ships	Average N.R.T.		No. of Ships	Average N.R.T.
1958.....	288	536.0	2	11	4,568.6
1959.....	98	1,509.6	2	13	4,633.5
1960.....	106	1,258.3	1	9	3,940.3
1961.....	88	1,160.9	1	7	2,735.7
1962.....	94	1,226.2	2	6	3,678.2
1963.....	97	1,137.8	1	8	3,376.3
1964.....	131	1,068.0	—	—	—
1965.....	103	1,253.9	—	—	—
1966.....	186	868.2	—	—	—
1967.....	162	959.8	—	—	—

*D.B.S. does not include pilotage information in its statistics.

However, pilotage statistics since 1961 do not give the true picture since occasional vessels were piloted in and out by their coastal pilots on board when local pilots were not readily available.

The infrequency of pilotage demand was reflected in the organization and availability of the service. The pilots could not reasonably be expected to be constantly available and they considered pilotage a secondary occupation.

The service was provided by two pilots, one regular and one on standby. A third person occasionally acted as pilot when the two others were not available.

The regular pilot, who lived on the mainland, held a Master's Coast-wise Certificate. He had served in small vessels engaged in local trade and also with the Royal Canadian Navy. The standby pilot was a fisherman who resided on Black Island, close to the pilot boarding area.

There have been no reported casualties within the last decade.

There was no pilot station as such, but the recognized pilot boarding area for inbound vessels was east of Black Island at the entrance to the Eastern Arm. Requests for pilots were received from agents by the Commission's Secretary who passed the information on to the regular pilot, or, in his absence, to the relief pilot. For an inward pilotage, either the relief pilot who resided on Black Island would board the vessel from his own power fishing boat and bring the vessel in, or the regular pilot would go to Black Island in his power fishing boat and there await the vessel's arrival. After embarking, his boat would follow the ship into port. The reverse procedure would take place for outbound vessels.

The billing and collection of dues earned by the Lewisporte pilots were effected by the Secretary, who was also one of the three Pilot Commissioners. Information for billing was supplied by the Master of the ship or the shipping agent.

The rate structure was the same as for other Newfoundland Pilotage Ports, i.e., a scale based on net tonnage (Ex. 266).

Similarly, pilotage earnings were also shared between the pilots and the Pilot Commissioners. Here, however, the Pilot Commissioners' share took the form, not of a surcharge, but of a 10 per cent deduction from the gross receipts.

The following table shows the distribution of pilotage earnings for the years 1960 to 1963 (Ex. 261).

Year	Gross Receipts	10%	Pilot	Standby Pilot
1960.....	\$ 799.82	\$ 79.98	\$ 499.80	\$ 220.40
1961.....	475.02	47.50	427.52	—
1962.....	506.83	50.68	218.08	50.00
				188.07
1963.....	609.84	60.98	548.86	—

This 10 per cent deduction, although not provided for in the By-law, served to pay expenses incurred in the administration of the District, such as telegrams and long distance telephone calls, and the balance of the fund thus created was shared equally by the members of the Commission at the end of each year, notwithstanding sec. 2 of the Outport Pilotage statute which enacted that the Commissioners were to act gratuitously. However, the amounts involved were small and no complaints were ever voiced. This deduction had been made for several years and the members of the Pilotage Commission were unable to explain how it originated. The possible origin would appear to be the 1923 amendment which increased the rates by 10 per cent. The Lewisporte pilots had no welfare plan, did not benefit from Workmen's Compensation and had no Pension Fund.

In its brief to this Commission (Ex. 256), the Lewisporte Chamber of Commerce advocated that a suitable pilotage service be maintained. It pointed out that, since neither pilotage nor the payment of dues was compulsory, very few vessels made use of the pilots' services and, therefore, the pilotage organization was very weak financially and unable to maintain an adequate service. It recommended that Lewisporte be made a Pilotage District under Part VI of the Canada Shipping Act and the compulsory payment of dues imposed in order to raise the necessary funds. This brief was supported by the Lewisporte town council. (Ex. 260.)

COMMENTS

It is considered that the decision not to create a Pilotage District for Lewisporte under Part VI C.S.A. was correct because the limited demand does not warrant such a comparatively large organization. Pilotage guidance for larger vessels which call only occasionally could easily be provided by qualified Pilotage Advisers (Part I, pp. 492-3). It is further considered that the safety of navigation would be greatly enhanced if, as proposed by the pilots, adequate aids to navigation were provided at Mussel Bed Rocks and the hazardous locations in Burnt Bay.

Subsection IV

PILOTAGE DISTRICT OF HUMBER ARM, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The legislative situation in this Pilotage District is the same as in Botwood (p. 592). Two Orders in Council concern Humber Arm specifically:

- (a) P.C. 1964-2015 (Ex. 1462 (e)) made pursuant to Part VI C.S.A. secs. 324 and 326 creating the Humber Arm Pilotage District, effective January 1, 1965, fixing its limits and making the payment of dues compulsory.
- (b) P.C. 1964-2016 (Ex. 1462 (e)) made under sec. 325 C.S.A. appointing the Humber Arm Pilotage Authority effective January 1, 1965.

In addition, on February 19, 1965, P.C. 1965-303 approved the new District regulations made by the Pilotage Authority (Ex. 269), and on March 25, 1965, Corner Brook was proclaimed a "Public Harbour" by P.C. 1965-563 with limits established about half way through the Pilotage District some five miles west of the town and six miles inside the seaward pilotage limit as follows (Ex. 511):

"All the waters of Humber Arm lying East of Longitude 58° 04' W. and including the Humber River to the bridge crossing at Latitude 47° 57' 12" N.; Longitude 57° 53' 18" W."

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of Humber Arm was created by P.C. 1964-2015, effective January 1, 1965. The Order in Council made the payment of dues compulsory and fixed the District limits to cover the same area as defined under the repealed legislation:

"...to include therein all the navigable waters of Humber Arm east of a line from Frenchman's Head to McIver Point;..."

The District comprises all the waters of Humber Arm, the southern of the three arms that extend eastward from the Bay of Islands. Corner Brook lies at the head near the mouth of the Humber River 11 miles from the seaward limit of the District.

By a separate Order in Council, P.C. 1964-2016, also effective January 1, 1965, the Governor General in Council continued the system of a local Commission and appointed the three former Pilot Commissioners as the Pilotage Authority, Mr. F. B. Hawkins, Chairman, Mr. A. M. Dunphy and Mr. H. W. Dawe, members, and also appointed Mr. Dawe Secretary-Treasurer pursuant to sec. 328 C.S.A. This Order in Council is silent as to his remuneration which is fixed in the District General By-law at 5% of the gross receipts.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Shortly after their appointment, on January 20, 1965, the Pilot Commissioners submitted a District General By-law to replace the former by-laws that had been repealed as of December 31, 1964. This General By-law received approval by the Governor in Council on February 19, 1965. Here again, the confirming Order in Council erroneously mentioned that this General By-law revoked the previous by-laws. The fact that these previous by-laws had been made after Union and confirmed by the Governor General in Council did not alter the legal situation since they had all been made under the now repealed Newfoundland statute "Of Outport Pilots and Pilotage".

The only amendment to the By-law to date (1969) occurred September 29, 1966, when, P.C. 1966-1858 approved a new tariff and modified the exemptions.

Except for exemptions and financial administration, the provisions of this By-law are the same as those of the Botwood By-law (vide pp. 594-595). However, as far as sick leave is concerned, there is no problem of interpretation such as posed by the Botwood By-law since subsec. 21(6) does not contain the words "with pay". The provisions covering exemptions and financial administration differ in two respects.

(a) *Withdrawal of statutory relative exemptions* (Part I, p. 221). In 1965, the former scheme of exemptions was retained and the exemption of subsec. 346 (e) C.S.A. was withdrawn except for vessels owned by a resident or a corporation of Newfoundland, or for vessels engaged exclusively in the Newfoundland coasting trade. Since 1966, however, the exemption of subsec. 346 (e) C.S.A. has been limited to small vessels, between 250 and 800 NRT, provided they are fully engaged in Newfoundland coastal trade. Vessels under 250 NRT enjoy the absolute exemption of subsec. 346 (f) which can not be modified no matter what type of trade they are engaged in. This provision is illegal in so far as it purports to apply to vessels which are not "steamships" as defined in subsec. 2(105) C.S.A.

(b) *Financial administration*. Humber Arm retained the system laid down in the former By-law, i.e., only one fund is maintained, contrary to the practice at St. John's and Botwood. This fund is

operated like a Pilotage Fund, i.e., the pilots' aggregate revenue is the net amount in the Fund after all operating expenses have been paid. Each month the pilots are paid their salary as determined by the Authority. At the end of the year, any surplus remaining after a reserve in an amount determined by the Authority has been deducted is distributed to the pilots and boatman as directed by the Authority. Under Part VI C.S.A. the Pilotage Authority can not accumulate any reserve and, therefore, the system is illegal. The Act does not allow the Pilotage Authority to take any responsibility whatever for providing services, or for the financial obligations which would ensue. (The present legislation does not provide for fully controlled pilotage, a situation which this Commission has recommended should be corrected (Part I, General Recommendations 14, 18 and 20). These financial provisions of the By-law are also illegal in that the amount of the pilots' remuneration is left to the arbitrary decision of the Pilotage Authority while, according to Part VI C.S.A., their remuneration should be fully dealt with in the regulations, a statutory provision which is sound and should be retained in the proposed new Pilotage Act. The aforementioned By-law provisions were considered *ultra vires* by the Supreme Court of Newfoundland in 1955 (Nathan Dyke v The Pilotage Commissioners for Humber Arm, Ex. 1528). (For further comments, vide Part I, pp. 92 and 317.)

2. HISTORY OF LEGISLATION

Humber Arm, previously referred to as Humber Mouth and later called Bay of Islands, was proclaimed a Pilotage Port under the Newfoundland Outport Pilotage legislation on August 18, 1923, effective August 5, 1924. From 1941 to 1952, the port and pilotage services were made a joint operation, although both were governed by separate statutes, by the stratagem of appointing the same members to the two controlling boards under the name "The Board of Harbour and Pilotage Commissioners for Humber Arm". In other words, the same persons were acting in different capacities under one name. In 1952, when two of the present members were appointed, the Board endeavoured to draw up new by-laws but was advised by the Department of Transport that any by-law made by the Board as Pilotage Authority could not contain any provisions dealing with the management and control of the harbour. Hence, the Commission limited itself to pilotage and has done so ever since. In any case, its only revenue was derived from pilotage.

The first General By-law became effective August 5, 1924, and, after amendment, *inter alia*, by P.C. 3844 of September 4, 1952, was superseded

by new regulations made by the Pilot Commissioners from time to time pursuant to the powers they derived from the Newfoundland Outport Pilotage statute (for the 1941 by-laws, vide Ex. 285). The last By-law before Union was confirmed by the Governor in Council September 9, 1953, by P.C. 1953-1375. Its tariff was amended on January 18, 1962 by Order in Council P.C. 1962-76 (Ex. 269).

This By-law was studied by Mr. Justice Dunfield in the case of Nathan Dyke previously referred to. With regard to its validity, he came to the following conclusions:

"Here we have regulations purporting to be made by the Pilotage Commissioners and to be confirmed by the Governor-General in Council on the recommendation of the Minister of Transport (the Federal Minister) which set up the Commissioners with a financial structure and a list of duties and responsibilities such as it seems to me are utterly beyond the scope of Section 6 of Chapter 179, which is a licensing act and practically nothing but a licensing act. That is the situation on the basis that Chapter 179 was embalmed and preserved, temporarily adopted, in a sense, as a Federal Act, by the Terms of Union Act; and perhaps also by Cap. 20 of 1952-53; but as to this latter, an interesting question may arise, which I need not here decide."

Moreover, Mr. F. P. Varcoe, then Deputy Minister of Justice, in a letter dated November 12, 1956 (Ex. 1165) containing an opinion he gave to the Deputy Minister of Transport, acknowledged that the above-mentioned decision was correct. Nevertheless, the organization which was objectionable from the legal point of view, but proved satisfactory in practice, was retained in the 1965 By-law, despite the fact that Part VI of the Act had not been amended to make it legal as the Deputy Minister of Justice had mentioned as the required course of action.

The 1953 By-law is a model of regulations for a system of controlled pilotage. It is clearly apparent that it was drafted for local needs by businessmen directly connected with local shipping operations. They succeeded in providing for a sound and economically run pilotage organization. The principal features of the By-law were:

- (a) Responsibility for administering the District and the service was shared by three persons:
 - (i) The Chairman of the Board had overall responsibility, i.e., he directed the general operations of the service, ensured that the pilots were on duty at the pilot station as and when required, and superintended the maintenance of the pilot station and the pilot vessel.
 - (ii) The functions of the Secretary-Treasurer were clerical, i.e., financial matters, minutes of meetings and statistics.
 - (iii) Day-to-day operations were the responsibility of the Chief Pilot.

- (b) The pilots were employees of the Board of Commissioners who engaged and licensed them on a yearly basis under given conditions. They had to be available for duty at all times (except when on vacation) and at least one pilot had to be at the pilot station or on board the pilot vessel throughout the navigation season, unless all the pilots were engaged in piloting. They were entitled to two weeks' vacation, normally during the closed season. The Chief Pilot had to ascertain from one of the Commissioners the daily expected arrivals and departures and it was the responsibility of the pilots to arrange assignments among themselves, and to notify the Secretary-Treasurer when a vessel entered the District and was offered a pilot. They were also required to assist in maintaining the pilot house by carrying out minor repairs. They supplied their own victuals for the pilot station and the pilot boat.
- (c) At the pilot station near the boarding station the Pilot Commissioners supplied a house with a kitchen and sleeping accommodation for three, as well as a pilot vessel operated by a boatman hired by them for the season and placed under the direction of the Chief Pilot. The boatman manned and maintained the pilot vessel. The pilot vessel was to be used exclusively for the pilotage service, except in case of emergency or by special permission or order of the Board of Commissioners.
- (d) The boarding station was defined as being "located in the vicinity of a line between Frenchman's Head and McIver Point at the entrance to Humber Arm", i.e., the seaward pilotage limit.
- (e) The payment of dues was compulsory whenever the services of a pilot were used or whenever a pilot offered his services to a non-exempt vessel and was refused. Exemptions were limited to Newfoundland vessels employed in fisheries; "coastal vessels and coasting vessels"; Government ships and pleasure yachts not exceeding 150 NRT whether registered in Canada or not. Vessels entering for refuge and hospital ships of the Government of Canada were also exempted and paid only half pilotage rate when a pilot was employed.
- (f) The pilots, the boatman and the Secretary-Treasurer (who was a member of the Board) were to receive the salary or remuneration determined for each by the Board at its annual meeting. Operating expenses were paid as incurred and any surplus of funds at the end of the year was to be divided between the pilots and the boatman at the Board's discretion, after a reserve had been set aside for depreciation or the replacement or renewal of the pilot boat and the pilot station, and "a safe operating capital" had been retained in an amount determined by the Board.

- (g) The tariff provided rates for pilotage voyages and movages according to scales based on net tonnage, with the exception of provincial mail steamers whose rate was based on horse power until revoked in 1962. In addition, a \$10 pilot boat charge was added in 1962.

This By-law was a self-contained set of legislation covering all aspects of the operation of the service, including the accessory services such as administration and the pilot vessel service, so that the service and accessory services were all governed by the same set of legislation and fully integrated. It was *ad hoc* legislation made locally to fit local needs. This is the ideal situation which conforms with the Recommendations of this Commission (Part I, pp. 513-514).

This General By-law ceased to have force and effect on December 31, 1964, when all Newfoundland pilotage legislation was repealed.

Chapter B

BRIEFS

Two briefs were submitted.

(1) THE BOARD OF PILOTAGE COMMISSIONERS FOR HUMBER ARM

After a brief historical review of the legislation that had applied to Humber Arm as a *Pilotage Port*, they made three recommendations (Ex. 287) that may be summed up as follows:

- (a) Pilotage in Newfoundland should be governed by Part VI of the Canada Shipping Act. (This has since been done).
- (b) The relative exemptions of subsec. 346 (e) C.S.A. should be limited, either through an amendment to the Act or through a regulation made under sec. 347 C.S.A., to vessels coasting in the waters of the province in which they are registered. In the case of Newfoundland the exemption would apply only to vessels registered in the province and operating in provincial coastal trade. (As seen earlier, this recommendation was implemented by the Pilotage Commissioners in their 1965 General By-law.)
- (c) Humber Arm should be given the financial assistance granted from public funds to other Districts for the operation of a pilot vessel service by the Pilotage Authority. (For this Commission's views, reference is made to General Recommendations 20 and 21, Part I, pp. 521 and 524.)

(2) THE HUMBER ARM PILOTS

Their three recommendations (Ex. 288) were:

- (a) The exemptions to the compulsory payment of dues should be restricted to Government ships, pleasure yachts, and fishing craft and ships under 200 NRT.
- (b) The compulsory payment of dues should be extended to movages.
- (c) The District pilotage regulations should be drafted in accordance with Part VI of the Canada Shipping Act.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

Humber Arm is situated on the west coast of Newfoundland at the southeastern extremity of Bay of Islands.

The entrance of the Arm between McIver's Point and Frenchman's Head southwestward from Woods Island is the seaward District limit. The Arm is roughly one mile wide and thirteen miles long and extends inland in a gentle curve to the south and east. The water is deep and extends close to the steep shores.

There are two good anchorages, one close to the Western Terminal Wharf at Corner Brook and the other at Pettipas Cove on the northern side of the Arm, one and a half miles across from Corner Brook. A third lies halfway down the Arm between Fox and Halfway Points. All these anchorages are within two or three cables of the shore.

Currents are not considered a problem by the pilots. They are strongest from the southeast but follow the axis of the channel; they are tidal and seasonal but of no great velocity.

Strong winds which occasionally reach 60 knots pose the greatest navigational problems and at times force vessels to anchor.

The Arm usually freezes over toward the end of December and clears at the end of April but it is reported that it remained clear of ice during the winter of 1968-9. Usually the ice is not thick enough to impede navigation, although it occasionally makes berthing and unberthing more difficult. When necessary the Bowater's improvised icebreaker consisting of a tug fitted with a bow plough assists. During severe winters when the ice may be heavier than usual, the Coast Guard icebreakers stationed at Sydney come to assist. When the Commission sat at Corner Brook in 1963, it was reported that on a few occasions when ice was heavy Port aux Basques was used as an alternative port, but Corner Brook is now considered open to navigation all year round.

The principal port in the District is *Corner Brook* situated in the southeastern part of the head of Humber Arm. It accommodates one of the world's largest paper mills. The main mill wharves have a continuous

frontage of approximately 2,000 feet. At the eastern end of the waterfront are the 300-foot Western Terminals wharf and the 120-foot Town wharf. Further eastward is the 600-foot C.N.R. wharf constructed in 1962.

The pilots stated they also occasionally pilot vessels near Brake Point situated about a mile east of Corner Brook to a wharf for handling cement and gypsum, and to Curling about two miles to the west to a small Government wharf for tankers.

(1) AIDS TO NAVIGATION

There is one unwatched light on Woods Island off the entrance to the Arm, a second at Frenchman's Head and a third at Meadows Point halfway down the Arm.

The pilots consider these aids satisfactory, even for a Master who enters the Arm for the first time.

The high cliffs which rise sharply from the shoreline give an excellent radar presentation.

The pilots make full use of radar and have found it reliable. They use echo sounding machines only when proceeding to an anchorage.

(2) MARITIME AND PILOTAGE TRAFFIC

Shipping traffic is mostly composed of vessels of about 3,000 NRT and under serving the export and import needs of the local paper mills of Bowater's Newfoundland Pulp and Paper Mills Limited and the North Star Cement Limited, and smaller cargo vessels handled by Western Terminals Limited.

In 1963, in addition to other vessels calling at its terminal, the Bowater's Company owned 11 vessels which it operated out of Corner Brook: three steamships each 419 feet in length and 3,900 NRT; six motor vessels each 325 feet in length and 2,071 NRT; one steamship 391 feet in length and 3,432 NRT and one 328 feet in length and 1,651 NRT.

The following table shows the extent of maritime traffic of vessels of 250 NRT and over and of the pilotage traffic together with the average NRT per ship in both cases, on a period basis (sources of information, Ex. 1483 D.B.S. and Ex. 270 (District annual reports)):

In 1959, the shipping pattern changed basically as larger vessels replaced twice as many small vessels. However, the aggregate NRT remained almost the same. Since then, the pattern has remained relatively constant except that there is a recent tendency toward smaller vessels, contrary to the experience in major ports. This indicates that the harbour activities are directly dependent upon local industries.

**COMPARISON BETWEEN D.B.S. AND PILOTAGE
STATISTICS FOR HUMBER ARM**
(Corner Brook—including Hughes Brook, Curling and Humbermouth)

Year	Arrivals of Vessels 250 N.R.T. and over (D.B.S.)		No. of Pilots	Vessels Paying Pilotage Dues	
	No. of Ships	Average N.R.T.		No. of Ships	Average N.R.T.
1958.....	741	1,077.4	—	not available	not available
1959.....	304	2,062.5	—	not available	not available
1960.....	293	2,125.8	2	279	2,305.1
1961.....	326	2,103.8	2	325	2,098.3
1962.....	313	2,015.8	3	304	2,074.0
1963.....	238	2,522.3	3	248	2,390.3
1964.....	289	2,264.2	3	309	2,111.1
1965.....	292	2,351.5	3	289	2,301.9
1966.....	363	1,874.6	3	345	1,988.8
1967.....	309	1,861.1	3	297	1,976.6

However, the pilotage statistics are somewhat misleading in that they do not indicate the number of ships piloted but only those paying dues. The following comparative table of the movements of ships paying dues was compiled from statistics (Ex. 1463(b)(2)) drawn from the pilots' log-book, except the 1963 and 1964 figures which were furnished by the Pilotage Authority (Ex. 274). It shows the use made of the pilots' services and the number of ships' movements involving the payment of dues although pilots were not employed. (Vide also graph Appendix A(1).)

MOVEMENTS OF SHIPS PAYING DUES

Year	With Pilots				Without Pilots				Total Move- ments
	In- ward Trips	Out- ward Trips	Mov- ages	Total	In- ward Trips	Out- ward Trips	Mov- ages	Total	
1958.....	233	161	114	508	21	83	20	124	632
1959.....	284	200	171	655	12	77	11	100	755
1960.....	271	210	157	638	5	46	6	57	695
1961.....	286	194	105	585	43	102	18	163	748
1962.....	246	201	66	513	60	85	14	159	672
1963.....	223	191	(135)*	—	25	57	*	—	631
1964.....	216	205	(110)*	—	97	108	*	—	736

*The Pilotage Authority's statistics for 1963 and 1964 do not segregate movages with and without pilots.

This table shows that a large number of non-exempt vessels dispense with the services of pilots even though they pay dues. In 1961 and 1962, the percentage was 21.8 and 23.7 respectively of total ships' movements, mainly on outward trips. The Pilotage Authority explained (Ex. 1463(b)) that the majority of sailings without pilots involve small vessels whose Masters are familiar with the waters of the District and dispense with a pilot on outward trips when the weather is favourable. This fact also confirms the comparative ease of navigation in the District. It can be safely surmised that the use made of the pilotage service is not wholly governed by a genuine need for assistance but is influenced to a considerable extent by the fact that the payment of dues is compulsory. Indeed, a complaint was registered with this Commission (Ex. 1463(e)) on August 3, 1965, on behalf of Mr. H.C. Druce, the charterer of *S.S. Rockcliffe Hall*, who was forced by the revocation of the ship's coasting licence and withholding of clearance on July 29, 1965, to pay dues for trips without a pilot. The vessel was trading between two ports in Newfoundland: Corner Brook and Hawke Bay. The complaint stated that the Master was fully qualified to bring the ship into Corner Brook, and had done so without a pilot on eight occasions that year, and that "in fact pilotage is not necessary at Corner Brook". This coasting vessel was subjected to the compulsory payment of dues on account of the discriminatory provision in the District By-law in favour of vessels owned in Newfoundland. (This provision was not retained in the 1966 amendment.) (Re the legality of the suspension of a coasting licence as a means of enforcing the collection of dues, vide Part I, p. 197.)

Statistics furnished by Bowater's Newfoundland Pulp and Paper Mills Ltd. show that their facilities were used by a greater number of ships and, on the average, by larger ones than any other terminal. Most loaded mill products; others brought in bulk cargoes such as limestone, fuel oil, equipment and pulp wood; and some vessels, mostly coastal and C.N.R. vessels, exclusive of regular paper carriers, were merely supplied with bunkers (Ex.283). The details are as follows:

Year	No. of Arrivals	Aggregate NRT	Average NRT
1960.....	215	557,111	2,591.2
1961.....	202	573,442	2,838.8
1962.....	158	449,310	2,843.7
1963.....	160	470,900	2,943.1
1964.....	169	493,449	2,919.8

The following table gives particulars of the traffic handled at Western Terminals Limited. The statistics (Ex. 284) provide gross tonnage only; the net tonnage would be substantially lower. Most ships calling at this terminal are comparatively small and many are coastal vessels.

Year	No. of Vessels	Aggregate Gross Tonnage	Average Gross Tonnage
1960.....	103	159,067	1,544.3
1961.....	104	131,624	1,265.6
1962.....	106	107,308	1,012.3
1963.....	115	143,328	1,246.3
1964.....	79	117,593	1,488.5

The details of North Star Cement Limited shipping (Ex. 1463 (b)) operations are as follows:

Year	No. of Vessels	Aggregate NRT	Average NRT
1960.....	29	15,844	546.3
1961.....	42	21,043	501.0
1962.....	34	13,026	383.1
1963.....	42	25,438	605.6
1964.....	37	18,937	511.8

The traffic at the North Star Cement wharf consists mainly of small coastal vessels calling to load cement.

2. ORGANIZATION

When the Commission sat at Corner Brook in 1963, a Board composed of three Pilot Commissioners formed the Pilotage Authority. All were local residents connected with shipping: Mr. F. B. Hawkins, Chairman, appointed in 1952; Mr. A. M. Dunphy, Vice-Chairman, appointed in 1941; Mr. H. W. Dawe, member and Secretary-Treasurer, appointed in 1952.

In November, 1966, Mr. Dawe died, and was temporarily replaced as Secretary-Treasurer by his widow, Mrs. Edith Dawe, who was subsequently appointed as such in May, 1967 (Ex. 1463(u)).

In February, 1969, the Chairman, Mr. Hawkins, died creating a second vacancy on the Board. As of March 1 steps were being taken to appoint replacements.

Minutes are kept of all meetings (Ex. 286). These well kept minutes provide a continuous picture of the Humber Arm Pilotage Commission's administrative activities.

The Commissioners pay themselves a remuneration which is entered in the financial statement as "Commissioners' expenses". For further details, vide p. 641.

The Secretary-Treasurer's functions are merely clerical: day-to-day administration, establishment book, financial statistics, reports and financial statements.

The Secretary-Treasurer's remuneration is fixed by the By-law at 5 per cent of the gross receipts of the District. Mr. Dawe used his own car in the course of his duties but considered his remuneration reimbursed him for all expenses including rental for his office in his own home.

Pilotage operations are directed by the senior pilot.

3. PILOTS

In 1961, the number of pilots was increased from two to three and none has been licensed since.

In 1963, the senior pilot had been engaged as pilot since July 1, 1948; his licence was issued April 1, 1954. He held a Mate's Home Trade Certificate. The second pilot was first engaged as an apprentice pilot July 1, 1954, and was issued his pilot's licence April 1, 1955. He held certificates as Master Home Trade and Mate Foreign-going. The third pilot was also first engaged as an apprentice pilot as well as a boatman July 1, 1960; his pilot's licence was issued April 1, 1963. He also held certificates as Master Home Trade and Mate Foreign-going. None of these pilots had undergone any formal examination before being licensed but apparently they were well known to the members of the Pilotage Commission.

There were neither apprenticeship nor probationary periods at that time and a newly appointed pilot was allowed to pilot vessels without restriction.

The late Secretary-Treasurer testified that he exercised no surveillance over the pilots' leave during any given year because the system was not abused. At that time, they were authorized to take a week off annually if they could make suitable arrangements among themselves. Since 1965, the By-law has provided for 21 days' annual leave to be taken at a time to be determined by the Secretary, usually during the winter when traffic is minimal.

In recent years there have been no cases requiring disciplinary measures and no shipping casualties have been reported.

The pilots have had minor accidents, in none of which they were apparently at fault. One occurred in 1956 when approaching a wharf to berth and colliding with it causing damage to the wharf but none to the vessel. A second occurred in February, 1959, with the same vessel when berthing at night in ice. The vessel struck ice close to the wharf and sheered into it, but little damage resulted.

4. PILOTAGE OPERATIONS

(1) BOARDING AND PILOT STATIONS

When the Commission sat at Corner Brook, the 1953 by-laws then in force established the pilot boarding station at the seaward limits of the District, i.e., in the vicinity of a line between Frenchman's Head and McIver's Point, but these by-laws were repealed in 1965 and the new General By-law is silent on the subject. Therefore, there is no officially designated pilot boarding station. However, in actual practice there are two boarding areas, one off Frenchman's Cove adjacent to Frenchman's Head and about 12 miles from Corner Brook, and the other off Curling adjacent to Petries Point and about 3 miles from the wharves at Corner Brook. The pilot vessel's moorings are at Curling. The pilots usually board incoming vessels and disembark from those outgoing off Frenchman's Cove (Ex. 1463(p)) with the exception of vessels serving Bowater's and other local firms whose Masters are well acquainted with the District, who when inbound embark a pilot off Curling, and when outbound disembark him off Meadows Point, about 5 miles from Corner Brook. The Masters of several vessels were reported to have mentioned to the pilots that the boarding station could be moved inside the Arm to Meadows Point without any inconvenience.

There was a pilot station at Frenchman's Cove which was used extensively until 1956, but it has since been abandoned, and the pilots now reside in Corner Brook from where they are despatched. The practice of keeping pilots at the seaward limit of the District was discontinued when a radio-telephone was installed on board the pilot vessel, and since then the pilot station has been used only occasionally as a shelter during the fall. For all practical purposes it has been unused for several years and was dilapidated in 1963.

The late Secretary-Treasurer expressed the opinion that the station was of no further use but the pilots felt it should be retained because of the possibility of a new station being built on the site. It was revealed in 1963 that the Pilotage Authority had no title of ownership to the land, approximately 140 feet by 60 feet fronting on the Arm, but this was corrected November 26, 1964, when a deed of conveyance was granted by the owners of the land, Bowater's Newfoundland Pulp and Paper Mills Limited (Ex. 1463(b)). At present no pilot station is maintained.

(2) PILOT VESSEL SERVICE

Pilot vessel service is provided by the Pilotage Authority which owns *M/V Humber Pilot* and employs boatmen to operate and maintain her. Her moorings are at Curling, a section of Corner Brook (Ex. 1463(p)). The cost of this service forms part of the operating expenses of the District. To

finance capital expenditures, a reserve from pilotage earnings is accumulated from year to year in an amount deemed necessary to meet future requirements.

This pilot vessel was built for the Pilot Commissioners in 1955 at a cost of \$10,634.83 and paid for out of funds accumulated for the purpose. Her length is 38.8 feet, beam 11.9 feet, draught 5.0 feet, GRT 15 and NRT 9. She is powered by a 54 h.p. engine and fitted with standard equipment. In 1956, the Pilot Commissioners purchased and installed a radiotelephone on board and a new set in 1963 (Ex. 271). She is fully insured for \$11,000.

For several years only one boatman was employed on a seasonal basis. He held a temporary Master's certificate of service for that type of vessel. He was given one day's leave per week when the vessel was operated by one of the pilots. Since June, 1965, there have been two boatmen. Their remuneration is a fixed salary and a bonus granted at the end of the year at the discretion of the Pilotage Authority (p. 638).

In 1961 and 1962, the cost of operating the pilot vessel service, not counting depreciation on capital investment but including boatmen's remuneration, amounted to \$7,425.86 and \$8,232.70 respectively (Ex. 273). Since then costs have increased, (vide Table p. 640) but have been partly offset by the revenue yielded from the pilot boat charge (\$4,480 in 1962).

During the winter period when the pilot vessel is laid up for repairs, the pilots use an icebreaker belonging to the Bowater's Company. Prior to 1963, it appears that no charge was made for its use but since then, by verbal agreement, the regular boat fee is paid the company when their icebreaker is used for embarking or disembarking.

No special arrangements are made for a substitute pilot vessel. It was stated that, if necessary, any local boat available would be used but this need has not arisen in recent years.

The pilots expressed the opinion that their pilot vessel was a good sea boat and well equipped. They also considered that the installation of the radiotelephone had greatly improved the service and their working conditions.

(3) DESPATCHING

Despatching is done by the senior pilot from Corner Brook. He receives all ETA's and requests for pilots and then arranges despatching. Although it was stated that the pilots are assigned on a roster basis as directed by the senior pilot (Ex. 1463(p)), the records show that assignments are not equally shared.

(4) WORKLOAD

The extent of the pilots' work on a yearly basis is shown in the table on p. 631.

Pilotage traffic is spread unevenly throughout the year. As shown by the graphs in App. A(1), the volume is light during the five months from

December to April with extreme lows in February or March. As may be expected, traffic is greater during the summer months but varies from year to year with no set pattern. From October on it decreases rapidly and does not resume until the spring.

With respect to time spent on assignments, the following particulars were given:

- (a) The trip on board the pilot vessel from Corner Brook to Frenchman's Cove takes between an hour and an hour and ten minutes, and about half an hour to Curling the normal boarding place. It is reported that waiting for ships' arrivals is short nowadays.
- (b) The normal inward trip from Frenchman's Cove, including berthing, takes roughly an hour and a half; steaming alone varies between 40 to 50 minutes depending on weather conditions and the speed of the vessel; from Curling, it takes about 20 to 25 minutes less;
- (c) The pilots are not required to travel by land.
- (d) On account of the location and special features of certain wharves, some movages are protracted. It was reported, for instance, that a movage from Bowater's wharf to the North Star Cement wharf might take four hours (Ex. 1196). (For the number of movages performed, vide Table p. 631).

Therefore, the normal time for an inward trip including travel time on board the pilot vessel is roughly two hours and a half if the ship is boarded off Frenchman's Cove, and about one-third less if she is boarded off Curling. If the total number of assignments in any given year is divided by three, the pilots' workload is shown to be moderate, despite the fact that they do not all perform the same number of assignments.

The Commission received no complaints about workload, either from the pilots themselves or from the Pilotage Commission.

5. PILOTS' REMUNERATION AND TARIFF

(1) PILOTS' REMUNERATION

The salary of the pilots is fixed unilaterally at the beginning of each year by the Pilotage Authority on the basis of the previous year's revenue and an estimate of income in the ensuing year. It is paid every two weeks throughout the year. Originally, because of the reduction in traffic during the winter months, the third pilot was taken off pay from the time the pilot vessel was hauled up for the winter season until she was refloated in the spring. This practice was discontinued in 1965 and the three pilots now receive almost the same remuneration.

At Christmas, the Pilotage Commission calculates what will remain after all expenses are met and sets aside a certain amount in reserve toward such items as replacing the pilot vessel or her engine, or for any other unpredic-

table expenditures, as well as for current expenses during the winter season including the semi-monthly salaries of pilots. The remainder is then distributed among the pilots and boatmen in the form of bonuses (vide details for 1965 shown in Table p. 641).

The amount shown as the pilots' individual remuneration also contains:

- (a) annuity premiums for each pilot (p. 642); since the premiums are established according to individual age, the amounts vary and account mainly for the difference in the individual remuneration figures; (except for 1967, when the accounting procedure in this respect was changed, the annuity premiums are shown as a separate item of expenditure; in the following table this was corrected so that the 1967 figures are comparable with those of other years);
- (b) occasional outport pilotage dues; it appears that such dues are paid to the pilot who performs the service in addition to his regular salary, e.g., this accounts for the \$34.80 discrepancy in the 1967 pilots' "take home pay" which appears to be due to two pilots sharing \$108.60 outside pilotage revenue, less \$20 boat charges.

The following table lists the three pilots' actual remuneration for the years 1962 to 1967 inclusive:

Year	Individual Remuneration			Average Share Per Establishment Pilot of the District Total Cost
	1st Pilot	2nd Pilot	3rd Pilot	
1962.....	\$7,790.68	\$7,389.40	\$6,142.10	\$12,041.44
1963.....	7,940.68	7,539.40	6,004.60	11,728.08
1964.....	8,240.68	7,839.40	6,484.60	12,108.33
1965.....	7,940.68	7,539.40	7,204.60	12,348.66
1966.....	8,332.03	7,930.75	7,820.95	13,747.12
1967.....	7,940.68	7,574.20	7,539.40	13,995.80

In addition, the Commission pays on behalf of the pilots the contribution for Workmen's Compensation and half the contribution to the Canada Pension Plan as employer (Part 1, p. 81). These expenditures are shown as District operating expenses and are not reflected in the individual remuneration figures quoted above.

The pilots have been under Workmen's Compensation since 1953, with the Board of Harbour and Pilotage Commissioners for Humber Arm being shown as their employer. The pilots do not enjoy the benefits of Unemployment Insurance. In 1959, the Unemployment Insurance Commission advised the Pilot Commissioners that the pilots could not be included with the boatman for Unemployment Insurance purposes.

The pilots incur no personal expense in the performance of their duties.

(2) TARIFF

The tariff structure is the same as in the other Newfoundland Pilotage Districts, i.e., a scale based on net tonnage plus a surcharge. The tariff was last revised in 1966 when the voyage rates and the pilot boat fee were raised by 20 per cent but the moorage fees remained unchanged.

The tariff provides that when the pilot boat can not be used owing to ice conditions or for other reasons the actual cost of hiring a substitute pilot vessel will be charged.

The only complaint made against the tariff was by the pilots who have often requested that a detention charge be provided for. This has so far not been granted by the Pilotage Authority. It is reported that the pilots are not normally called upon to wait and any waiting time would not exceed one hour at the most. For the Commission's comments on detention charges, vide Part II, pp. 157 and ff.

COMMENTS

There is no specific reason for retaining the surcharge in the tariff structure. In the Districts of St. John's and Botwood, there is a reason for making the surcharge a separate component of pilotage dues, i.e., it forms a separate Fund, but in Humber Arm the revenue derived from the surcharge is placed in the same Fund as the revenue from other pilotage rates. Therefore, the only limited advantage it provides is a simple method of varying the rates by modifying the percentage of the surcharge.

6. FINANCIAL ADMINISTRATION

The Secretary-Treasurer attends to billing and collecting pilotage dues. The late Secretary reported he had had some difficulty collecting dues from certain non-exempt ships which did not employ pilots. In the few instances of this nature it appears that the explanation given by him with particular reference to those sections of the By-law dealing with exemptions was sufficient to convince the shipowners or their agents that the payment of pilotage dues was compulsory. As seen earlier (p. 632), coercive measures were necessary in 1965 to enforce compulsory payment upon S.S. *Rockcliffe Hall*. Legal proceedings had to be taken again in 1967.

The District and the service are financially administered as if they formed a private corporation, with the exception that any profits after paying all expenses and setting aside a reserve for eventual capital or other expenditures belong to the pilots as their remuneration.

Therefore, two funds are maintained:

- (a) The *Pilotage Fund* is the current bank account into which the pilotage receipts are entered and from which the day-to-day operating expenses are paid. No distinction is made between the revenue yielded by the surcharge and other revenue. This fund is expended

at the end of each year except for a sum retained to meet expected current expenditures, pay the salaries of the pilots and boatmen whose services have not been terminated during the winter and build up reserves. Any surplus is divided by the Pilotage Authority among the pilots and the boatmen at its discretion. If there is not enough money to cover the year's expenses including adequate remuneration for the pilots, the additional funds required are withdrawn from the Reserve Fund.

- (b) The *Reserve Fund* takes the form of a savings bank account into which the sum set aside to form a reserve is deposited at the end of each year. The money in this fund bears interest at the current bank rate for savings accounts. It is used to finance anticipated capital expenditures (thus spreading the cost over a period of years); and also to ensure that the pilots receive adequate remuneration in years when pilotage receipts are insufficient, e. g., 1965 and 1966.

The financial statements shown on the District's annual reports do not reflect this financial arrangement, but consist merely of statements of receipts and disbursements for the year. A comparative table of such statements for the years 1965, 1966 and 1967 follows:

	1965	1966	1967
REVENUES			
Voyage dues.....	\$31,211.00	\$34,955.20	\$35,349.80
Movages.....	1,695.00	1,456.00	2,300.00
Boat charges.....	4,140.00	4,476.00	4,224.00
Outside pilotage.....	—	250.00	108.60
Transportation of pilots.....	—	104.16	5.00
Total revenues.....	37,046.00	41,241.36	41,987.40
EXPENDITURES			
Pilots' remuneration.....	22,684.68	24,083.73	23,054.28
Boatmen's remuneration.....	7,865.80	9,290.80	8,510.00
Secretary's remuneration.....	1,852.30	2,062.06	2,091.16
Commissioners' expenses.....	600.00	600.00	600.00
Pilot vessel operating cost.....	4,707.82	5,201.34	3,768.87
Pilots' expenses.....	205.85	119.16	669.65
Transportation.....	—	—	5.00
Canada Pension Plan.....	—	366.20	409.15
Workmen's Compensation.....	600.00	759.75	840.40
Unemployment Insurance.....	71.40	169.32	11.32
Auditing.....	100.00	100.00	100.00
Stationery.....	97.25	110.29	31.36
Postage and telephone.....	21.60	67.60	—
Bank charges.....	1.09	0.32	—
Miscellaneous.....	80.87	118.36	25.00
Legal fees.....	246.80	—	93.50
Total.....	39,135.46	43,048.93	40,209.69
Deficit or surplus.....	-2,089.46	-1,807.57	+1,777.71
	\$37,046.00	\$41,241.36	\$41,987.40

The deficit of \$2,089.46 as shown in 1965 resulted from the bonuses (for details see the following table) granted by the Authority to the pilots and boatmen in the amount of \$3,625.00. This sum exceeded the unspent balance of the year's earnings by the former amount which was paid from the Reserve Fund.

Pilots' and boatmen's salaries, bonuses and annuity premiums that year were as follows:

	Salary	Bonuses	Annuity Premiums	Remuner- ation
1st Pilot.....	\$6,000.00	1,000.00	940.68	7,940.68
2nd Pilot.....	6,000.00	1,000.00	539.40	7,539.40
3rd Pilot.....	5,700.00	1,000.00	504.60	7,204.60
Total for pilots.....	17,700.00	3,000.00	1,984.48	22,684.48
1st boatman.....	4,800.00	400.00	340.80	5,540.80
2nd boatman.....	2,100.00	225.00	—	2,325.00
		(3,625.00)	2,325.48)	
Totals.....	24,600.00	5,950.48		30,550.48

As of December 31, 1965, the undistributed amounts totalled \$24,646.22 divided as follows:

Pilotage Fund:

On hand, in transit and in current account..... \$10,024.06

Reserve Fund:

Cash in savings account, St. John's..... 10,640.95

Cash in savings account, Bank of Montreal, Corner Brook..... 3,981.21

Total cash assets, December 31, 1965..... \$24,646.22

Although the Newfoundland Outport Pilotage legislation stipulated that the Pilot Commissioners were to serve gratuitously and no remuneration was provided for them in any By-law, their custom has been to vote themselves a remuneration. This doubtless can be traced back to the time when pilotage and harbour operations were combined through the device of having the two required boards composed of the same persons. The current remuneration for the Chairman and the Vice-Chairman is \$600 shared between them. For bookkeeping purposes, this amount is entered misleadingly as *Commissioners' expenses*. This remuneration was decided by motion at a regular meeting of the Pilotage Commissioners. The third member received only his authorized remuneration as Secretary, i.e., 5 per cent of the District gross earnings.

The legal fees incurred in 1965 and 1967 were for the collection of outstanding pilotage bills.

The operating costs of the pilot vessel include the cost of hire of a replacement vessel during the winter months when the pilot vessel is laid up.

The item *pilots' expenses* comprises the cost of uniforms, medical examination and taxis.

COMMENTS

The financial procedure is illegal under the present legislation. First, the necessary approval for expenditures has not been obtained (except for the remuneration of the Secretary) as required by sec. 328 C.S.A. Second, all the dues belong to the pilots except the few deductions authorized by the Act; it is at present illegal to maintain a reserve, no matter how desirable and logical this may be now that pilotage is fully controlled (vide Part I, C. 5).

This financial procedure has one serious drawback, namely, the discretionary power exercised through administrative decisions by the Pilotage Authority to determine the pilots' remuneration. Whatever system is used, the pilots' remuneration must not be established by the unilateral decision of one of the parties involved but must be provided for in the legislation itself (vide Comments pp. 210 and ff.). In this connection see also General Recommendations Nos. 14, 18, 20, 21 and 25.

7. PENSION FUND

For a considerable time, the Humber Arm Pilotage Commission tried to get their pilots under some sort of pension scheme. In 1962, when an increase in the rates became effective, an independent insurance company submitted a plan which was accepted. Prior to this submission, the matter had been discussed with the Department of Labour and the Department of Finance.

Each pilot holds a separate non-participating policy issued by the Manufacturers Life Insurance Company of Canada for retirement savings annuity payable during the life of the annuitant, with 120 monthly payments of \$120 guaranteed in any event (Ex. 1463 (b)). This was decided at a joint meeting of the Pilot Commissioners and the District pilots. Each pilot authorized the Secretary and Treasurer in writing to deduct from his earnings a sum sufficient to cover the premium. The premiums, which vary with the age of the pilot (vide p. 638), are deducted by the Pilotage Authority from the pilot's remuneration and forwarded to the insurance company.

CHAPTER D

For Recommendations affecting this District see Subsection VI.

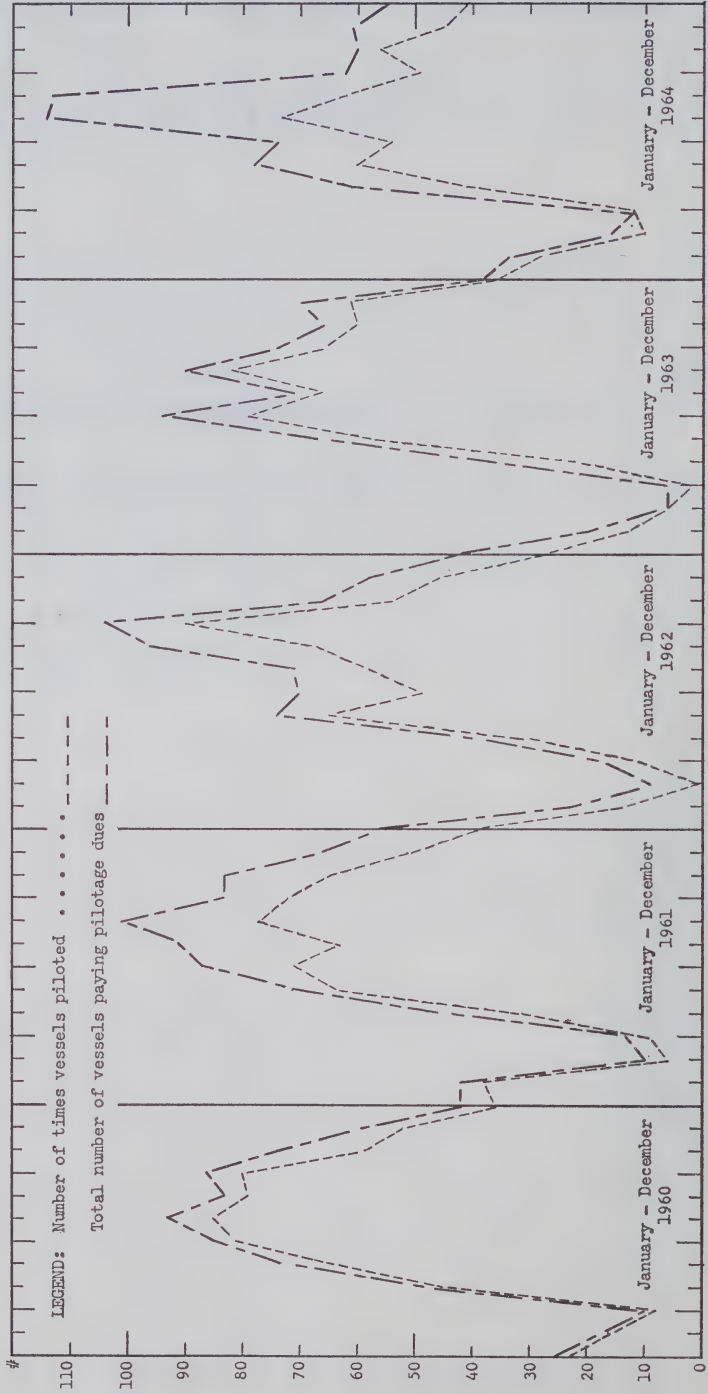
Chapter E

APPENDICES

APPENDIX A

- (1) *Graph*—Monthly Volume of Traffic in the Pilotage District of Humber Arm during the Five-Year Period 1960–1964.
- (2) *Table*—Monthly Volume of Traffic in the Pilotage District of Humber Arm during the Five-Year Period 1960–1964.

Appendix A (1)
MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF HUMBER ARM
During the Five-Year Period 1960-1964



Appendix A (2)

MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF HUMBER ARM

During the Five-Year Period 1960-1964

Month	Number of Arrivals, Departures and Movages* without a Pilot					Number of Times Vessels Piloted					Total Number of Vessels Paying Pilotage Dues				
	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964
January.....	2	3	9	7	6	23	38	14	13	28	25	41	23	20	34
February.....	0	4	8	0	6	16	6	1	6	10	16	10	9	6	16
March.....	2	4	7	4	0	8	9	11	2	12	10	13	18	6	12
April.....	4	15	10	8	20	44	31	30	21	41	48	46	40	29	61
May.....	10	8	9	10	18	63	63	65	57	60	73	71	74	67	78
June.....	4	16	21	15	20	81	71	49	79	54	85	87	70	94	74
July.....	8	28	13	5	39	85	63	58	66	73	93	91	71	71	112
August.....	4	24	29	8	49	79	77	67	82	62	83	101	96	90	111
September.....	6	11	14	8	13	82	72	90	66	49	88	83	104	74	62
October.....	5	18	12	6	4	69	65	54	60	56	74	83	66	66	60
November.....	7	15	12	9	16	52	51	46	61	45	59	66	58	70	61
December.....	5	17	15	2	14	36	39	28	36	41	41	56	43	38	55
TOTAL.....	57	163	159	82	205	638	585	513	549	531	695	748	672	631	736
Average per Month.....	4.8	13.6	13.3	6.8	17.1	53.2	48.8	42.8	45.8	44.3	57.9	62.3	56.0	52.6	61.3

*For the years 1963 and 1964, the movage figure does not indicate whether or not the vessels are piloted; consequently, for these two years, the total number of movages are added to the "number of times vessels piloted" (trips in and out, and movages).

Subsection V

PILOTAGE DISTRICT OF PORT AUX BASQUES, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The legal situation is the same as described in the Pilotage District of Botwood (vide p. 592). Port aux Basques was the third Newfoundland Pilotage Port created a Pilotage District after Part VI of the Canada Shipping Act was made applicable to Newfoundland.

Two Orders were made by the Governor in Council to create the District and appoint its Pilotage Authority:

- (a) P.C. 1964-2017 dated December 23, 1964, made pursuant to secs. 324 and 326 C.S.A. creating the Port aux Basques Pilotage District effective January 1, 1965, fixing its limits and making the payment of dues compulsory (Ex. 1462(c));
- (b) P.C. 1964-2018 dated December 23, 1964, made pursuant to sec. 325 appointing the Port aux Basques Pilotage Authority effective January 1, 1965 (Ex. 1462(c)).

Port aux Basques had already been proclaimed a public harbour under sec. 600 C.S.A. by P.C. 1957-1659 dated December 13, 1957, with limits described as follows:

"All tidal waters of Port aux Basques west of Longitude 59° 07' W. and north of Latitude 47° 34' N." (1462(i)).

The Port aux Basques legislation was completed on March 25, 1965, when P.C. 1965-560 approved the new District regulations made by the Pilotage Authority (Ex. 278).

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The District was created as aforesaid by P.C. 1964-2017 dated December 23, 1964. This Order in Council made the payment of dues compulsory and fixed as District limits the same area defined in the earlier but now repealed legislation, namely:

"...to include therein all the navigable waters of Port aux Basques Harbour northwest of a line from Channel Head to Shoal Point;...".

Contrary to the usual practice, the District waters so defined do not include all the waters of the public harbour. The seaward District limits are about 1200 feet inside the apex of the lines delineating the seaward harbour limits.

In P.C. 1964-2018 the Governor General in Council continued the system of a local Commission and appointed as Pilotage Authority the three former Pilot Commissioners: Mr. I. E. Davis, Chairman, Dr. C. L. Legrow and Mr. H. Dolomount, members, and pursuant to sec. 328 C.S.A. sanctioned the appointment made by the Pilotage Authority of Mr. H. Dolomount as Secretary-Treasurer. This Order in Council is silent as to the remuneration of the latter, but the subject is covered in the District By-law.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Shortly after their appointment, the Pilot Commissioners submitted a District General By-law to replace the former by-laws that had been repealed as of December 31, 1964. This General By-law received approval by the Governor in Council on March 25, 1965, as aforesaid (P.C. 1965-560), Ex. 278). The confirming Order again erroneously mentioned that this General By-law was "revoking the By-laws made pursuant to the Newfoundland Statute "Of Outport Pilots and Pilotage", chapter 179 of the Consolidated Statutes of Newfoundland 1916 (Third Series), and making the annexed Port aux Basques Pilotage District General By-law in substitution therefor". (Vide p. 592).

This General By-law has not been amended since. It is a verbatim copy of the General By-law of the District of Botwood (vide pp. 593 and ff.), with the following exceptions:

- (a) The Secretary's remuneration is established at 5 per cent of the District gross receipts.
- (b) Small foreign vessels under 250 NRT are exempted and the exemption to steamships engaged in the voyages defined in subsecs. 346(e)(ii) and 346(e)(iii) C.S.A. partially withdrawn. There is full exemption for all steamships wholly engaged in the coastal trade of Newfoundland, and for steamships under 1,000 NRT trading in coastal or inland waters. For such vessels of 1,000 NRT and over, compulsory payment is imposed to the extent of one fifth in the case of a "steamship that regularly enters and leaves the District at least once every 48 hours, according to a published Schedule of arrivals and departures", i.e., the C.N.R. car ferry plying between Sydney and Port aux Basques, and to the extent of two thirds for other steamships.
- (c) The method of financing District and service operating costs is the same as in the Humber Arm District. All receipts are purported to belong to the Pilotage Authority, the pilots' remuneration takes

the form of a salary fixed unilaterally each year by the Pilotage Authority plus any bonus it may decide to grant at the end of the year, and the unexpended surplus after the end of the year is accumulated to form a reserve for current expenditures, anticipated large capital expenditures and possible operational deficits. The only significant difference in the text of this section is that in the Humber Arm District it is mandatory (*shall*) for the Pilotage Authority to issue bonuses after the required deduction has been made for the reserve fund while at Port aux Basques it is discretionary (*may*).

- (d) The rates take the usual form of a scale based on net tonnage with the difference that each rate is for a round trip (inward and outward). There is a minimum of \$11.20 for vessels up to 120 NRT; for vessels between 700 and 800 NRT the charge is \$48 and for every 100 tons in excess there is a flat rate of \$2.40 per 100 tons. Morage charges are uniformly \$12. There is no tug boat charge. In addition, there is a 15 per cent surcharge on all pilotage dues.

2. HISTORY OF LEGISLATION

Port aux Basques was proclaimed a Pilotage Port under the Newfoundland Outport Pilotage legislation dated December 13, 1910, effective July 1, 1911. Its pilotage regulations from 1911 to 1953 were patterned after those of other Newfoundland outports, more particularly those of Humber Arm, and were sanctioned by the Governor General in Council pursuant to the powers derived from Term 11 of the Terms of Union of Newfoundland with Canada and sec. 6 of the Newfoundland Statute "Of Outport Pilots and Pilotage" by P.C. 1953-1234 dated August 5 (Ex. 278).

The District limits remained unchanged and a boarding station was to be located in the vicinity of the District seaward limit. The By-law provided for fully controlled pilotage and the various responsibilities were divided among the Commission Chairman, the Secretary-Treasurer and the Chief Pilot as at Humber Arm. Pilots were employees of the Pilotage Authority and the financial organization and procedure were also the same. The only slight differences were that, although the Pilotage Commissioners had to furnish a pilot vessel and provide for its operation, they did not provide a pilot station. The exemptions were the same, except that all vessels not exceeding 100 NRT were also exempted. The Secretary-Treasurer's remuneration was to be determined by the Board at its annual meeting.

The rates were the same as those now in force, including the 15 per cent surcharge, with the main difference that at the time there was a maximum charge of \$48 for sailing vessels and \$96 for steamships. Vessels registered in Newfoundland and operating on a schedule between any other province of Canada and the port were required to pay half the regular pilotage rate.

Chapter B

BRIEFS

The only brief which specifically concerned pilotage in Port aux Basques was filed in Sydney by Canadian National Railways (Ex. 402). For the recommendations contained in this brief, vide pp. 272-273.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The Pilotage District of Port aux Basques is situated at the southwestern tip of Newfoundland, about eight miles southeast of Cape Ray. The District limits approximate those of the public harbour which exceed them to seaward by about 1,200 feet up to the fairway whistle buoy. Some 2,000 feet southeast of the whistle buoy lies Southeast Shoal. Port aux Basques is the only harbour in the District. It is a Port of Entry.

The deep, well marked entrance from the seaward pilotage limit lies between Channel Head and Shoal Point, one mile from the wharves. For three quarters of a mile it follows a straight course clearly marked by range lights, then curves around Vardys Island and widens to approximately 400 feet.

Southeast Shoal, with a depth of 32 feet, presents a potential danger for deep draught vessels but the main dangers are East Baldwin Rock and Middle Baldwin Rock, the latter about 4 cables from the entrance where the channel narrows to about 350 feet. Vessels entering with a strong following swell are liable to sheer. Both rocks are well marked by light and bell buoys.

During the winter, very high southeast winds frequently create a heavy swell at the entrance to the harbour and are an important factor when berthing and unberthing. At times, the pilot advises Masters not to enter because of this hazard, e.g., on one occasion in 1962, five or six vessels remained outside for this reason.

There is little current in the harbour. On a flood tide it flows inward from the west and swerves north and eastward across the harbour, but on neap tides there is practically no current.

The harbour is deep but small and berthing and unberthing are difficult during high winds. There are several small wharves and two main ones, the C.N.R. ferry terminal with a least depth alongside of 28 feet at the main berth and the Paper wharf with 29 feet.

Fog occasionally prevails but it has little effect on the movements of vessels. Navigation by radar is quite effective because of the undulating shoreline.

(1) MARITIME AND PILOTAGE TRAFFIC

Maritime traffic is mainly composed of regular traders, i.e., C.N.R. vessels, Imperial Oil Tankers, small vessels operated by Blue Peter Steamships, and occasionally fishing trawlers seeking refuge in winter on account of ice in the Gulf of St. Lawrence (vide Table, p. 659).

The following table shows the number of arrivals of vessels of 250 NRT and over and their average net tonnage, the number of vessels that paid pilotage dues and their average net tonnage, and the number of vessels that employed a pilot.

COMPARISON BETWEEN D.B.S. AND PILOTAGE STATISTICS
FOR PORT AUX BASQUES

Year	Arrivals of Vessels 250 N.R.T. and over		No. of Pilots on Strength	Vessels Paying Pilotage Dues		
	No. of Ships	Average N.R.T.		(Arrivals)		No. of Vessels Employing Pilots
				No. of Ships	Average N.R.T.	
1958.....	1006	1014.4		n/av.	—	n/av.
1959.....	635	2562.6		n/av.	—	n/av.
1960.....	727	2466.4	1.5	698	2541.0	40
1961.....	781	2260.3	1	625	3781.1	68
1962.....	849	1986.2	1	711	2307.9	41
1963.....	995	1876.6	1	969	1858.6	41
1964.....	886	1937.8	1	969	1833.1	39
1965.....	940	3081.8	1.5	804	3356.5	n/av.
1966.....	1021	3187.8	2	771	4003.6	n/av.
1967.....	1147	3143.1	2	809	3723.0	n/av.

SOURCES: Ex. 1483, 276 and 1463 (c).

No pilotage statistics are kept other than those necessary to compute and collect dues. Hence, there is no segregation of cases where ships were piloted and those that paid dues without employing a pilot. Research by this Commission has proved that the figures shown on the Pilotage Authority's annual reports of assignments performed by pilots are totally inaccurate. The figures quoted in the last column of the foregoing table were compiled by the Secretary of the District at the Commission's request. They show the ships actually piloted (at least inward) other than the C.N.R. vessels which do not employ pilots (Ex. 1463 (c)).

The following table is compiled from statistics kept by pilot A. J. Melbourne in his own log book. At the Commission's request, he identified those ships actually piloted and movages performed. The resultant information is again at variance with other information received and shows an even smaller number of pilotage assignments.

Year	Total No. of Vessels	Not Piloted	Piloted	Movages	Annual Assignments
1958.....	804	790	14	4	18
1959.....	595	581	14	9	23
1960.....	700	684	16	28	44
1961.....	731	694	37	55	92
1962.....	809	792	17	23	40
1963.....	959	913	46	9	55

SOURCE: Ex. 1462 (s) (3).

These tables prove that the number of vessels employing pilots compared with the number of vessels calling at the port is exceedingly small.

This situation is mainly due to three factors:

- (a) the comparative ease of navigation;
- (b) most traffic consists of the regular arrivals and departures of C.N.R. vessels performing ferry service between North Sydney and Port aux Basques or engaged in coastal trade (vide Table, p. 659);
- (c) the small number of foreign vessels—aggregate cargo handled by foreign bottoms amounts to less than 1 per cent.

The ease of navigation in the District is demonstrated by the fact that prior to 1965 most vessels dispensed with the services of a pilot despite the fact they were subject to the full payment of dues.

The Canadian National Railways ferry *William Carson*, 4,604 NRT, was the largest vessel calling regularly at Port aux Basques. In 1963, for instance, she accounted for 206 arrivals. The pilot stated that the largest vessels he piloted were of 3,000 to 4,000 NRT.

The Marine Superintendent of Canadian National Railways, Newfoundland area, testified with respect to the extensive local experience of their Masters and mates in M. V. *William Carson* and S.S. *Cabot Strait*, both trading regularly between North Sydney and Port aux Basques. Canadian National Railways submitted that in these circumstances it was abusive to subject their ferry service to the compulsory payment of dues.

Up to 1965, most of the revenue (86%) was provided by pilotage dues charged to M.V. *William Carson*, and most of the rest of the dues collected were from vessels not employing a pilot; this is obviously a preposterous

situation (vide Part I, p. 618). Vide also graph Appendix A(1) showing the monthly volume of traffic for the years 1959-1963 and the incidence of C.N.R. vessels arrivals.

According to the *Newfoundland Pilot*, (3rd edition) "the majority of the trade occurs in winter, with the export of fish, and newsprint from the mills at Corner Brook".

COMMENTS

The foregoing is a glaring example of the unwarranted and absurd situation that results when discretionary power is used indiscriminately.

In both the Newfoundland and Canadian statutes dealing with pilotage, the compulsory payment of dues was a means of exception to be adopted only as necessary to ensure that a District had adequate revenue to maintain the pilotage services it required. Instead, when Districts were created, compulsory payment was imposed as a matter of routine and generally applied beyond reasonable financial requirements. In Port aux Basques, it has been an outright abuse. Unjustifiable advantage was taken of the fact that a ferry service using that port was being provided by a Crown agency.

The pilotage demand at Port aux Basques is so insignificant that it does not warrant the organization of a Pilotage District as provided under Part VI C.S.A.

2. ORGANIZATION

The previous form of organization has been retained unchanged; the Pilotage Authority consists of three Pilot Commissioners and the previous incumbents have been continued in office. They were all appointed at the same time by P.C. 1953-63 dated January 16, 1953.

The Chairman, Mr. I. E. Davis, is the Collector of Customs; the second member, Dr. C. L. Legrow, a local physician, and the third member and Secretary and Treasurer, Mr. Henry Dolomount, the Supervising Principal of Schools.

The Secretary-Treasurer is limited to clerical duties, i.e., he collects pilotage dues, pays pilots' and boatmen's salaries and other District expenses. He also records the minutes of meetings of the Commissioners.

3. PILOTS

Prior to 1960, there were two pilots. From 1960 to July 1, 1965, the limited pilotage demand was attended to by only one pilot, Mr. Allan James Melbourne. On July 1, 1965, the number was increased to two by the appointment of Mr. Nelson Miles as pilot.

Mr. Melbourne became a pilot in 1954. He holds a Master's Certificate of Service, having had at least three years' service as Master in the home trade and passed the required examination. His experience was gained in

vessels of roughly 30 tons net sailing in Newfoundland coastal waters. He served no apprenticeship. He became a pilot after the Pilot Commissioners who had advertised for the position interviewed him about his qualifications and accepted him. He had no previous experience berthing larger vessels but acquired the necessary skill while piloting, without informing Masters that his training was limited.

Mr. Nelson Miles is the former boatman. He holds a Master's Certificate of Service limited to vessels of 350 tons.

No shipping casualties with pilots have been reported in recent years. Pilot Melbourne testified that there had been only two accidents since 1959. The ship *Labeka* ran into the old C.N.R. wharf during the winter of 1960 with the pilot on board. When the engines failed he was unable to stop the vessel because the port anchor only was available (the starboard anchor was frozen in). No blame was attached to the pilot. During the autumn of 1962, M.V. *Ardglen* struck the western breakwater in fog. The pilot was not on board at the time; he had disembarked off Vardys Island because he feared he would be unable to do so farther out. It appears that the Master was familiar with the harbour because he had brought his vessel in and out several times.

Between 1963 and 1967, three shipping casualties are reported (not counting one fire). A pilot was not on board any of the vessels involved (Ex. 1467).

- (a) On June 21, 1966, M.V. *Elise Marie* was struck by the M.V. *Lief Eiriksson* while berthed, reportedly due to mechanical difficulties, causing damage estimated at \$25,000.
- (b) On July 22, 1966, M. V. *Loretta and Marion* grounded in dense fog, total loss.
- (c) On February 22, 1967, the ferry M.V. *Patrick Morris* collided with the ferry M.V. *William Carson* and grounded, cause high wind; damage to both vessels was minor.

COMMENTS

Since the actual amount of pilotage is not sufficient to keep even one pilot reasonably occupied, the only possible justification for the appointment of a second one would be to ensure service in case of sickness or absence for other causes.

To require two pilots to be available at all times is unnecessary and results in an unwarranted financial burden on the District. In the circumstances, the pilots should not be directed not to engage in other occupations, provided one is readily available when required.

4. PILOTAGE OPERATIONS

(1) BOARDING STATION AND PILOT STATION

It appears from the evidence that the pilots embark and normally disembark in the vicinity of the seaward District limit. Occasionally, as previously mentioned, the pilots disembark well inside the harbour during adverse weather.

There is no pilot station. However, a small shed owned by the Port aux Basques Pilotage Commission is used for the pilot vessel. It is 10 feet long and 8 feet wide and was built by the Commission in 1949 on the wharf where the pilot vessel is berthed. It provides no accommodation for the pilots, and is used simply to store spare engine parts and other pilot vessel equipment.

The pilot vessel *Incha* was built at North Bay, Newfoundland, in 1954, specially for the District. She is 34.5 feet long, 10.8 feet wide, 4'9" draught, wooden hull, decked over and has seating capacity. She is powered by a 72 h.p. diesel engine and is equipped with radiotelephone but is without radar or echo sounding device. The pilot said she was satisfactory. She is overhauled and repaired annually (in the past locally but in recent years in North Sydney) and replaced temporarily by a local boat.

The one boatman is on duty 24 hours a day and is always on call. He is also responsible for general maintenance of the vessel.

There is no set notice of requirement to obtain the services of a pilot. In 1963, the practice was for ETA's to be forwarded to the pilot by the agents or the telegraph company.

The pilot vessel takes 10 to 15 minutes to reach the boarding station from the harbour. In good weather a vessel takes about 20 minutes from the boarding station to her berth, but in adverse weather about 10 minutes longer, and approximately the same time outbound.

5. PILOTS' REMUNERATION AND TARIFF

As in the Humber Arm District, there is no direct relationship between the tariff and the pilots' remuneration since the pilots are considered employees of the Pilotage Authority and their remuneration consists of a salary fixed every year by the Authority plus a bonus which the Authority may grant. There is, however, an indirect relationship because the District is financially self-supporting.

For the amount of the pilots' and boatmen's "take home pay", reference is made to the Table on p. 660.

In addition, the Pilotage Authority pays on behalf of the pilots and the boatman one half their yearly annuity premiums (p. 660), the Canada Pension Plan contribution since 1966 (Ex. 1500) and the Unemployment Insurance

assessment. The following Table shows the details of the remuneration paid the pilot and the boatman in 1963.

	Pilot	Boatman
Salary.....	\$ 8,132.84	\$ 7,144.04
Bonus.....	6,400.00	5,000.00
Unemployment Insurance.....	48.96	48.96
Half share of annuity premium.....	236.40	413.88
Half share of dues for Canada Pension Plan (since 1966)	n/a	n/a
Total remuneration.....	\$ 14,818.20	\$ 12,606.88

SOURCE: EX. 1462 (s) (3).

The pilots and the boatmen are reimbursed all the expenses they incur while providing their services, e.g., in 1963, Pilot Melbourne is shown as having been reimbursed the sum of \$1,070.69 and Mr. Miles, then boatman, \$35.85 (Ex. 1462 (s) (3)).

The tariff structure is the same as in the other Newfoundland Districts, i.e., basic rates in the form of a scale based on net tonnage, plus a surcharge. The only difference is that no rate is provided for a one-way trip, either inward or outward. Since the tariff does not authorize a partial rate if a pilot is employed only one way, the full rate applies even if compulsory payment does not. This is considered an unnecessary imposition on shipping which should be corrected. Port aux Basques is the only District in Canada where such a system exists.

As in the Humber Arm District, there is no specific reason for maintaining a surcharge since all the revenue from the tariff is credited to the Pilotage Fund without distinction.

Re the tariff structure, vide the comments on p. 562.

The tariff has not been materially altered since 1953. The substantial decrease in total receipts since 1965 is accounted for by the reduction in the compulsory payment of dues effected in 1965 whereby coastal and inland traders pay only two thirds (one fifth if a ferry) of the regular dues when a pilot is not employed. This is clearly apparent from the table on p. 659 which shows the District total revenues for the years 1960 to 1967 compared with the amount paid by C.N.R. vessels not taking pilots in each of these years.

6. FINANCIAL ADMINISTRATION

Dues are normally collected by the Secretary-Treasurer. He makes out bills according to information obtained from the Master of the ship or from the Customs officer. No difficulty has been experienced collecting dues.

This District is administered financially like the Humber Arm District (p. 639).

Administration related to the actual pilotage demand would be very small but the Secretary's time is mostly spent collecting and sharing the extensive revenue derived from non-exempt vessels which dispense with the services of pilots.

The revenue derived as a result of the compulsory payment of dues can not be determined accurately for lack of statistics but the dues collected for assignments actually performed are insignificant in comparison.

This conclusion is supported by the breakdown of revenue on the basis of clients shown in the annual reports prior to 1962. It is known that the Canadian National Railways vessels did not employ pilots; the small vessels of Blue Peter Steamships presumably did not employ pilots in Port aux Basques any more than they did at St. John's; and it is quite possible that most Imperial Oil Limited vessels dispensed with pilots also. The receipts for the year 1960 were grouped as follows in the District annual report:

Canadian National Railways.....	\$ 34,201.73
Imperial Oil Limited.....	1,341.76
Foreign trawlers.....	828.57
Blue Peter Steamships.....	216.12
Miscellaneous.....	83.77
Total.....	\$ 36,671.95

The pattern has remained substantially the same as is shown by the following table which lists the total pilotage revenue of the District for the years 1960 to 1967 and the amounts paid each year by Canadian National Railways.

Year	District Total Pilotage Receipts	Total Pilotage Dues Paid by C.N.R.	% of District Gross Pilotage Revenues Paid by C.N.R.
1960.....	\$ 36,671.95	\$ 34,842.55	95.0
1961.....	38,451.00	34,781.46	90.5
1962.....	37,280.38	34,825.59	93.4
1963.....	41,292.43	38,856.26	94.1
1964.....	42,740.07	40,339.48	94.4
1965.....	28,734.44	24,823.40	86.4
1966.....	24,286.85	20,738.00	85.4
1967.....	24,940.89	22,242.00	89.2

The following comparative table shows pilotage revenues and District operating expenses for the years 1962 to 1967, excluding revenue derived from other sources, principally the interest from the Reserve Fund savings accounts. This table is compiled from the financial information provided in the District annual reports which contain very few details.

	1962	1963	1964	1965	1966	1967
REVENUES						
Pilotages dues.....	\$37,280.38	\$41,292.43	\$42,740.07	\$28,734.44	\$24,286.85	\$24,940.89
	37,280.38	41,292.43	42,740.07	28,734.44	24,286.85	24,940.89
EXPENDITURES						
<i>Salaries:</i>						
1st Pilot.....	15,503.20	14,818.20	15,718.20	14,118.20	10,918.20	10,578.12
2nd Pilot.....	—	—	—	11,106.88	9,806.88	9,406.80
1st Boatman.....	13,766.88	12,606.88	13,206.88	800.00	525.00	930.43
Asst. Boatmen.....	nil	400.00	600.00	nil	nil	203.20
Secretary's remuneration.....	1,864.00	2,604.62	2,137.00	1,436.72	1,214.34	1,247.04
Maintenance.....	4,676.66	2,590.23	2,732.72	4,006.69	3,520.35	4,914.67
	35,810.74	32,479.93	34,394.80	31,468.49	25,984.77	27,280.26
	+1,469.64	+8,812.50	+8,345.27	-2,734.05	-1,697.92	-2,339.37
Surplus (+) or Deficit (-).....	\$37,280.38	\$41,292.43	\$42,740.07	\$28,734.44	\$24,286.85	\$24,940.89

In the financial statements, all expenditures other than salaries and Secretary's remuneration are grouped under one heading called *Maintenance*. Information obtained from the books kept by the Secretary-Treasurer (Ex. 1462(s) (3)) provided additional details which are also at some variance with the breakdown of expenditures. For 1963, the revenue figures coincide (\$41,292.43) but the amount shown as total expenditure amounts to \$33,949.57 and, hence, is higher by \$1,469.64. The main items of expenditure, apart from salaries to pilots and boatmen and the Secretary's remuneration, are:

- (a) \$1,200 paid annually to one of the Commissioners for the rent of the wharf on which the pilot shed is built and for the right-of-way to it which passes through his property (the basis of this recurring expenditure was not fully explained in the evidence);
- (b) \$180.00 and \$18.96 paid for rent and electricity for the Secretary's office;
- (c) expenses of the Pilot Commissioners, the Secretary-Treasurer, the pilot and boatman, amounting to \$105, \$33.85, \$1,070.69 and \$35.85 respectively;
- (d) Repairs and supplies for pilot boat and the pilot shed amounting to \$758.74;
- (e) Workmen's Compensation premium \$581.50.

The annual reports are silent as to the state of the Reserve Fund. It is composed of the amount remaining in the current account and the savings accounts at the end of the year. As in the Humber Arm District, any surplus at the end of the year over and above the required operating reserve is invested in savings accounts. In Port aux Basques, the operating reserve need not be large, since the winter months are normally the most active ones. Any operational deficit is covered by this reserve. The accumulated reserve in both current and savings accounts amounted to \$41,515.13 as of December 31, 1964. The Pilotage Authority reported that such a large amount was kept on hand to provide for the eventual purchase of a new pilot vessel (Ex. 1463(c)). In 1967, the revenue derived from interest in the savings accounts amounted to \$1,131.12. As of December 31, 1967, this Reserve Fund comprised (Ex. 1463(r)):

Cash on hand.....	nil
Current account.....	\$ 1,430.00
Savings account.....	34,558.58
Total Reserve Fund.....	\$ 35,988.58

7. PENSION FUND

In 1956, the Pilot Commissioners decided to purchase Canadian Government annuities for the two pilots on strength at the time and for the boatman.

The Commission pays half the cost and the pilots and boatman the other half. The premiums amounted to \$650.28 in 1963. The amount of the premiums varies with the age of each individual, namely, \$236.40 for pilot Melbourne and \$413.88 for pilot Miles. The benefits are \$100 a month for life commencing at age 65.

Chapter D

For Recommendations affecting Port aux Basques see Subsection VI.

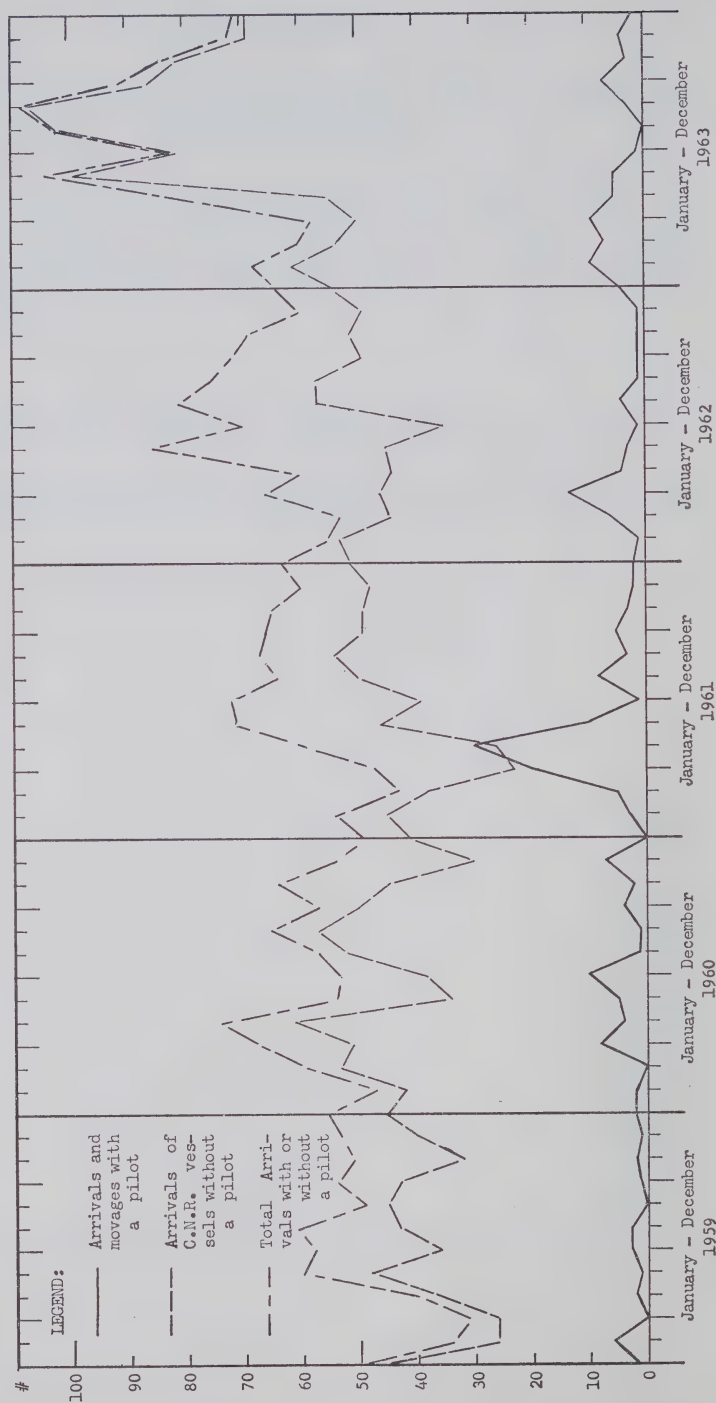
Chapter E

APPENDICES

APPENDIX A

- (1) *Graph*—Monthly Volume of Traffic in the Pilotage District of Port aux Basques, during the Five-Year Period 1959–1963.
- (2) *Table*—Monthly Volume of Traffic in the Pilotage District of Port Aux Basques, during the Five-Year Period 1959–1963.

Appendix A (1)
MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF PORT AUX BASQUES
During the Five-Year Period 1959-1963



Appendix A (2)

MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF PORT AUX BASQUES

During the Five-Year Period 1959-1963

Month	Arrivals with a Pilot (trips in and out)				Movages with a Pilot				Total Vessels Piloted				Arrivals of C.N.R. Vessels Not Using a Pilot				Total Arrivals with or without a Pilot			
	1959	1960	1961	1962	1963	1959	1960	1961	1962	1963	1959	1960	1961	1962	1963	1959	1960	1961	1962	1963
	1	1	1	1	7	1	1	2	0	2	2	2	3	1	9	45	42	45	53	61
Jan.....	1	1	1	1	7	1	2	2	0	2	2	6	0	5	7	26	53	38	44	53
Feb.....	4	0	3	7	7	2	0	6	1	1	0	1	8	13	9	26	51	23	46	50
March.....	0	7	13	7	8	0	7	0	6	1	0	0	20	9	5	37	61	26	44	55
April.....	1	3	15	1	4	1	15	4	3	1	2	4	30	4	5	48	34	46	45	99
May.....	0	1	2	1	5	1	4	8	2	0	1	5	10	3	5	36	38	39	35	81
June.....	1	0	1	0	1	2	10	0	1	1	3	10	1	1	1	36	38	39	35	81
July.....	2	0	1	0	0	1	7	4	0	0	3	1	8	4	0	43	52	50	57	102
August.....	0	1	0	0	1	0	3	1	2	1	0	0	1	3	3	45	57	54	57	107
Sept.....	1	3	0	0	5	0	5	1	2	1	1	4	5	1	7	43	50	49	49	86
Oct.....	2	0	0	0	3	0	2	3	1	0	2	2	3	1	3	32	45	49	51	81
Nov.....	1	0	0	0	3	0	7	2	1	1	1	7	2	1	4	40	30	48	49	69
Dec.....	1	0	1	2	2	1	0	1	2	0	2	0	2	4	2	45	41	51	54	69
ANNUAL TOTAL.....	14	16	37	17	46	9	28	55	23	9	23	44	92	40	55	466	554	518	584	913
Monthly Average.....	1.2	1.3	3.1	1.4	3.8	0.8	2.3	4.6	1.9	0.8	1.9	3.7	7.7	3.3	4.6	38.8	46.2	43.2	48.7	76.1
																49.6	58.3	60.9	67.4	79.9

SOURCE OF INFORMATION: Exhibit 1462(s).

Subsection VI

RECOMMENDATIONS AFFECTING NEWFOUNDLAND
OUTPORTS AND COASTAL AREAS

RECOMMENDATIONS

RECOMMENDATIONS AFFECTING NEWFOUNDLAND OUTPORTS AND COASTAL AREAS

RECOMMENDATION No. 1

The Newfoundland Island Area, except for the Pilotage District of St. John's, to Constitute a Single Pilotage District of the Merger Type

The limited pilotage operations in the three existing Pilotage Districts apart from St. John's do not warrant a separate Pilotage District organization for each one. The correct decision was taken when the Pilotage Port of Lewisporte was not reactivated as a Pilotage District. It is considered that the same action should have been taken for the Pilotage District of Port aux Basques, whose main function appears to be the application of the compulsory payment system by collecting pilotage dues from ships which do not employ pilots under the pretext of supporting a pilotage service for which there is little need and of which minimal use is made.

On the other hand, there are several small ports and places along the coast where non-regular traders call from time to time and Masters seek the assistance of a person with local knowledge. In most cases there are such persons who offer their services as local pilots but the demand is insufficient to warrant the creation of separate Pilotage Districts, with the result that there is no official system of control and Masters would find it almost impossible to ascertain the competence of these persons before they are employed.

It is considered that the best solution lies in creating one District of the merger type (hereinafter referred to as the *Newfoundland Outports Pilotage District*) where the Pilotage Authority's functions would be limited to licensing, rate-fixing and connected responsibilities. The actual organization for the provision of services in each port or place would be left to local interested parties who would be at liberty to choose the type of organization best suited to local needs.

Such a system of organization would offer the advantage of a separate District for each outport without the disadvantage of over-organization. Shipping would be assured of the competence of the local pilots or pilotage advisers and they, in turn, would be protected by their licences from the

competition of unlicensed persons and encouraged to maintain their skill and knowledge in the expectation of reasonable security of employment.

It would be the responsibility of the Pilotage Authority of the proposed District to ascertain both present and expected needs for pilotage services and the availability of qualified persons to provide them at any port or place within its potential jurisdiction; to appraise the suitability of the existing or proposed organization for the provision of such services and, if none exists, to propose the type of organization that appears most effective; and to make recommendations to the Central Authority for the issuance of the requisite Pilotage Orders (vide Recommendation No. 17, Part I, pp. 506 and ff.).

It is further considered that such a merger type District should be provided with its own Pilotage Authority in the form of a three-member Board. If responsibilities were limited to licensing and rate-fixing for one or two ports, there would be no objection if these ports came under the Pilotage Authority for the St. John's District for such purposes; otherwise, it is to be feared that these functions would be undertaken in a perfunctory manner.

The Central Authority should empower the Pilotage Authority to issue pilotage adviser's licences instead of, or in addition to, pilot licences where such type of assistance appears to be sufficient and provided there are not enough qualified persons available to become pilots (General Recommendation No. 12, Part I, pp. 492 and 493).

The limits of pilotage waters at each outport should be established realistically to avoid an artificial workload by extending the length of pilotage trips unnecessarily. For instance, the limits of the present District of Botwood should be made to coincide with the present practice, i.e., relocated well inside the area off Govers Harbour which should be defined as the boarding station. Similarly, the Humber Arm seaward District limits should coincide with the seaward limits of the harbour of Corner Brook where the official pilot boarding station should be established. The present limits date back to the days of sailing vessels which needed an extensive area for manoeuvring but modern vessels no longer have such a requirement.

RECOMMENDATION NO. 2

The Various Pilotage Services within the Proposed Newfoundland Outports Pilotage District to Be Classified as Private Services

According to the criteria enunciated in General Recommendation No. 17 (Part I, p. 509), the pilotage services at the outports along the coast of Newfoundland should all be classified private services. They serve only their immediate neighbourhood and generally only one main local industry.

Therefore, if local interests consider it to their advantage to have an efficient pilotage service, it would be their responsibility to ensure that the service is provided by persons who meet the licensing requirements the Pilotage Authority considers necessary for the port in question and imposes through *ad hoc* regulations, and to provide the type of organization which the Central Authority has judged best suited to local requirements and approved through appropriate Pilotage Orders. Each separate pilotage service should continue to be self-supporting financially, as is now the case. If local conditions of service are not sufficient to attract and retain competent pilots or pilotage advisers, the outports concerned should be deleted by Pilotage Orders from the merger District's actual jurisdiction.

RECOMMENDATION NO. 3

The Inside Passage along the Northeastern Coast of the Island of Newfoundland not to Become Part of any Pilotage District but Persons Found Competent to Pilot in this Area to Be Issued Certificates of Approval by the Pilotage Authority of the Proposed Newfoundland Outports Pilotage District

At present, the demand for coastal pilotage through the inside passage to or from the Notre Dame Bay area is insufficient to warrant the creation of a separate pilotage area with its own licensed pilots, nor is it considered necessary to establish a separate coastal service. Shipping would be sufficiently protected if *certificates of approval* (Part I, pp. 483 and 484) were issued to competent persons providing such coastal services.

The present demand for such services is insufficient to provide adequate revenue even for the small number of pilots that would be required. The present system has given satisfaction and should be retained. The pilots who perform this service, whether licensed pilots of St. John's or any other District or unlicensed pilots, should be given certificates of approval if found qualified.

The responsibility for issuing such certificates of approval together with the ensuing surveillance duty should be entrusted to the Pilotage Authority of the proposed Newfoundland Outports Pilotage District because this coastal pilotage zone falls within the limits of its potential jurisdiction. Since pilotage would not be formally organized, the Pilotage Authority would not have power to fix rates. The charge for coastal services would continue to be subject to agreement between the pilot and the owner or his representative. Such charges would necessarily vary with circumstances, *inter alia*, the extent of idle time spent on board by the pilot and the cost of his transportation to or from his place of residence.

There is no objection if such coastal pilotage is undertaken by licensed pilots provided it does not interfere with the demand in the District or outport for which they are licensed.

Section Eight

GOOSE BAY-LABRADOR AREA

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

In contrast to other Canadian ports, the prime function of Goose Bay is to serve Government rather than private organizations. For this reason, the Federal Government, through the Department of Transport, assumes responsibility for providing its own pilotage service.

The development of Goose Bay began in 1941 when it was selected as the site for Royal Canadian Air Force and United States Air Force bases which became operational the following year. These bases subsequently evolved into a main international airport for military and civilian aircraft. A seaplane base was also established.

All basic construction materials for port facilities and air bases were brought in by sea and ships continue to be the principal means of transportation.

In this northern undeveloped region there are as yet no private industries which require maritime services and, hence, the airport remains the only justification for the seaport.

(1) PILOTAGE LEGISLATION

The only existing statutory pilotage legislation (Part VI C.S.A.) could not be applied to Goose Bay because it presupposes conditions that do not exist there, i.e., a self-supporting pilotage service performed by pilots who are free entrepreneurs (vide Part I, pp. 19 and 20). Hence, Goose Bay is not a Pilotage District. The statutory provisions of Part VI C.S.A. do not apply, except for those common to all pilots (vide Part I, p. 21). As a result, the pilots are not licenced, and, although they may be certified mariners and employed by the Crown, any person can offer his services in competition with them and charge any fee. The official pilotage rates are binding only for the services performed by the Crown pilots (Part I, p. 46).

The only legislation that specifically concerns the pilots and the provision of pilotage services is in the form of regulations made pursuant

to statutes of general application. This legislation is contained in an Order in Council (Ex. 1200) which fixes the rates, and an Order from the Treasury Board which governs the employment of the pilots by the Crown as prevailing rate employees.

By P.C. 1960-615, dated May 5, 1960, made by the Governor General in Council pursuant to sec. 18 of the Financial Administration Act, rates were officially established for the pilotage services provided by the Department of Transport.

These regulations provide:

- (a) The application of the rates:
 - (i) to the services provided by the Department of Transport pilots;
 - (ii) within the defined pilotage area "comprising Hamilton Inlet, Lake Melville, Terrington Basin and their connecting and tributary waters, and includes all harbours, bays and coves thereof".
- (b) The rates:
 - (i) for pilotage voyages either inward or outward within the pilotage area in the form of a minimum charge of \$175 for vessels not exceeding 3,000 NRT, and for those above 3,000 NRT the minimum charge plus 1¢ per ton over 3,000;
 - (ii) for movages at a flat rate of \$25.
- (c) The enforcement of the payment of dues was purportedly authorizing Customs officers at any port in Canada to withhold clearance, when so required by the Minister of Transport, of any ship owing such dues.

COMMENT

There is no statutory authority for this last provision (Part I, p. 20 footnote). It can not be made under sec. 18 of the Financial Administration Act because this Act merely authorizes the fixing of rates and leaves the enforcement of payment to be pursued by the normal means available for the collection of debts owed the Crown. Nor can sec. 344 C.S.A. apply because Goose Bay is not a Pilotage District.

(2) PREVAILING RATE EMPLOYEES GENERAL REGULATIONS

The pilots' status, remuneration and conditions of employment are governed by Orders issued by the Treasury Board under the Prevailing Rate Employees General Regulations, 1963, as amended (Ex. 1007).

The first Treasury Board Minute applicable to the Goose Bay pilots made under the Prevailing Rate Regulations was T.B. 455286, dated August 12, 1953, which were fixed the salary for the position of "ship's pilot" in

the Goose Bay area. The salary was established on a per diem basis at the rate of \$14.00. A subsequent Treasury Board Minute T.B. 541015, dated November 29, 1958, raised the per diem rate to \$17.50. These orders contained no restriction concerning the application of the Prevailing Rate Employees Regulations, with the result that the pilots were entitled to overtime, holidays and sick leave with pay. However, because the "work day" and the "work week" were not defined, the provisions governing these benefits were inapplicable in practice (vide p. 293).

The amount and basis of the pilots' salary and the extent of application of the Prevailing Rates Regulations were modified several times. The order now in force (T.B. 658594, dated August 12, 1966) fixes their salary at \$710 per month, effective June 1, 1966, and specifically provides that no additional payment is to be made for overtime. It further stipulates that the classification is exempted from subsec. 4(c) of the Regulations concerning the determination of "hourly rate", from sec. 8, which is a provision based on hourly rates, and from secs. 9 and 10 concerning the computation of overtime remuneration. The remainder of the Regulations were retained, with the result that the pilots are, *inter alia*, entitled to specified holidays with pay, compensation for work during a day of rest or a holiday, and to vacation leave credits. Here again, however, these provisions are inapplicable in law because the "appropriate Deputy Head", contrary to the Regulations, has failed to establish the "work day" and the "work week" required for the computation of these benefits. In fact, sick and annual leave credits, etc. are accrued; they are calculated on an unofficially established work week of 6 days, or 48 hours (Ex. 1206(b)). Re the applicability of the Prevailing Rate Employees Regulations to pilots, reference is made to the comments on p. 210.

In addition, the pilots may receive various allowances, if and when they meet the conditions and terms set out in the Isolated Posts Regulations (T.B. 635000 of June 20, 1958, as amended). *Inter alia*, they are entitled to a \$40 per month northern allowance. The cost of their living accommodation when provided by the Crown is established pursuant to the Public Service Living Accommodation Regulations (T.B. 626000 of May 21, 1964, effective July 1, 1964).

(3) PUBLIC HARBOUR LEGISLATION

Goose Bay was proclaimed a public harbour under Part X of the Canada Shipping Act by P.C. 3275 of June 11, 1952, with its limits defined as (Ex. 511):

"All navigable waters of Lake Melville, Goose Bay, and Terrington Basin south and west of a straight line joining the northern extremity of Northwest Point and the western extremity of Epinette Point as shown on the Cdn. Hydrographic Chart No. 4720."

Chapter B

BRIEFS

No brief was presented.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

(1) PHYSICAL FEATURES

The Goose Bay-Labrador pilotage area covers 92 miles of the enclosed waters which are entered from Hamilton Inlet. The seaward limit of the actual pilotage area is off Rigolet in The Narrows.

The approach to Goose Bay from Rigolet continues through The Narrows, which is 13 miles long and between $1\frac{1}{2}$ miles wide at its entrance and 3 cables wide at the exit off Eskimo Island, then southwestward for some 83 miles through Lake Melville to Goose Bay and Terrington Basin. Churchill River (formerly Hamilton River)¹ flows into Goose Bay.

In addition to The Narrows off Rigolet there are two other confined areas: *Goose Bay Narrows* from Lake Melville to Goose Bay, and *Terrington Narrows* from Goose Bay to Terrington Basin where the port facilities are located.

The pilotage waters are deep except in the 150-foot wide buoyed channel of Goose Bay Narrows and the 200-foot wide dredged channel of Terrington Narrows where the controlling depths in 1964 were reported as 35 feet. The latter is subject to shoaling (the depth shown on the 1960 chart is 31 feet).

Although the average tidal range in the area is only about $2\frac{1}{2}$ feet, the outward flow of the Churchill River and other large rivers and streams that empty into Lake Melville creates strong currents through constricted passages as the waters flow eastward to the open sea, a situation which is compounded during the freshet period until it subsides at the end of June.

In The Narrows, tidal currents attain a rate of 5 knots during spring ebb tides and 4 knots during the flood. During neap tides the flood and ebb

¹ The change of name from Hamilton Falls and Hamilton River to Churchill Falls and Churchill River was approved by the Canadian Permanent Committee on Geographical Names June 7, 1965.

are about 3 knots. At Goose Bay Narrows, the current reaches 5 knots at spring ebb tides and $2\frac{1}{2}$ knots at the flood. Under normal summer conditions the tidal currents at Terrington Narrows are similar to those at Goose Bay Narrows, but there are no significant currents within the Basin, which may be described as a sheltered pool large enough to provide anchorage for at least a dozen ships.

Ice conditions in Hamilton Inlet and its approaches vary with the severity of the winter, the volume of pack ice and the direction of prevailing winds. Westerly winds drive the ice off shore leaving a passage for navigation. From the middle of June, ice does not constitute a danger at The Narrows or *en route* to Goose Bay and the season of navigation is considered to last $5\frac{1}{2}$ months from about that date to the end of November.

Pilotage is performed day or night. The entrance to The Narrows is marked by a lighted buoy and points of danger *en route* to Goose Bay are marked by lights and buoys, including leading range lights for guidance through channels. The buoys are removed at the close of navigation and replaced with the assistance of the pilots when it opens.

Wharfage facilities situated on the south shore of Terrington Basin consist of the R.C.A.F. wharf with a frontage of 810 feet and 18 feet in depth, used generally by freighters, and an adjoining 132-foot jetty used for discharging petroleum products. Large, deep draught tankers which can proceed through Goose Bay Narrows and Terrington Narrows do not berth alongside but secure at mooring buoys, about 7 cables east of the R.C.A.F. wharf, and discharge through submerged pipelines which lead to an oil wharf projecting 1,000 feet from the shore. Deep draught vessels must anchor and be unloaded by lighters. The Government wharf, with a depth of 20 feet alongside, is about 4 cables northwest of the R.C.A.F. wharf and midway to the seaplane mooring area. It is used by D.O.T. vessels and coastal vessels carrying domestic cargoes. Two L.C.M.'s (Landing Craft Medium), owned and operated by the Department of Transport, are available to act as tugs, but vessels generally berth and unberth under their own power.

(2) MARITIME AND PILOTAGE TRAFFIC

Goose Bay traffic consists of oil tankers, coastal passenger vessels, coastal traders and vessels owned and operated by the Governments of Canada and the United States. Small ships and regular traders, such as Canadian National Railway passenger and cargo vessels, local traders and Government vessels do not employ pilots.

The following table shows the maritime traffic of vessels of 250 NRT and over (Ex. 1483) and the use made of the pilotage service (Exs. 1205 and 1206).

Year	D.B.S. Statistics of Vessels of 250 NRT and over		No. of Pilots	Pilotage Statistics	Extent of Use of Pilotage Services
	Arrivals	Average NRT		Trips performed by Pilots*	
1960	60	938.4	2	n/av.	—
1961	79	837.4	3	105	66.5%
1962	68	957.9	3	81	59.6%
1963	65	898.5	2	97	74.6%
1964	70	1,050.7	2	87	62.1%
1965	68	1,197.4	2	65	47.8%
1966	85	861.0	2	60	35.3%
1967	96	1,157.7	2	58	30.2%

*For comparative purposes one arrival means two trips, one inward and one outward.

This table shows that most ships are of relatively small size averaging about 1,000 NRT. The occasional large tanker is affected by the depth restriction of the channels, e.g., the tanker *Northern Shell* of 7,200 NRT (12,608 GRT) could not enter Terrington Basin in 1964, although she has negotiated Goose Bay Narrows, but anchored in Goose Bay off Groves Point while her cargo was shuttled in by the small tanker *White Rose*.

The pilotage service is described as similar to Great Lakes pilotage in that it covers a large expanse of enclosed water but, unlike the Great Lakes, strong tidal currents prevail in the narrow channels.

2. PILOTAGE ORGANIZATION AND OPERATIONS

Pilotage is provided by the Department of Transport as an optional service for the convenience of shipping to assist the U.S.A. and Canadian Government organizations at Goose Bay.

The pilotage service, which is under the immediate control and direction of the Harbour Master, a Department of Transport official, is integrated with port operations.

The seaward boarding station is situated off Rigolet at the seaward entrance to The Narrows.

The Department of Transport constructed and maintains a pilot station at Rigolet where the pilots have living accommodation in a building equipped with an electric generating plant, running water, bedrooms and cooking facilities. Both the pilot station and the pilot vessel are equipped

with radiotelephones. If ships can not contact the station by radiotelephone, messages may be relayed through Goose aeradio (VFZ), Cartwright (VOK) or Hopedale (VOQ). The station is attended by a Department of Transport employee who, in addition to taking care of the premises, handles such duties as manning the radiotelephone when the pilots are away and arranging for a local pilot vessel when the regular one is not available.

Pilot vessel service at the boarding station is provided by the D.O.T. vessel, M.V. *Prima Vista* (built in 1955, 64 tons gross, 41 net, length 63.4 feet, depth 17.6, 210 h.p.), and manned by employees of the Department of Transport. She is operated under the direction of the Department's District Marine Agent at St. John's, for in addition to her principal service as pilot vessel, she also services the buoys and lights from Hamilton Inlet to Goose Bay (Ex. 1463(n)). At such times, and when not available to the pilots, the pilot station attendant is authorized to hire a local motorboat, generally from the Hudson's Bay Company at Rigolet.

Vessels requiring a pilot are requested to give 24 hours' notice to avoid delay and vessels arriving for the first time are advised to take pilots because of the currents in the confined areas previously referred to.

The pilots are flown to the station by seaplane at the opening of navigation and for the remainder of the season they return to the station on disembarking from ships outward bound or are flown there if necessary.

3. PILOTS

The pilots are Department of Transport employees and their remuneration is determined under the Prevailing Rates Regulations.

Pilotage was first provided by the officers of the Department of Transport buoy vessel *Dollard* when the seaport and air base were being constructed. They then trained a local resident, Mr. Russell Chaulk, in pilotage, and he subsequently became the recognized pilot. In 1952, a second pilot was employed and, since traffic was increasing, a third pilot was engaged in 1955. From 1953 to 1955, the Harbour Master occasionally piloted vessels when the pilots were not readily available. From 1955 to 1959, three pilots were employed, two in 1960, three in 1961 and 1962. From 1963 on, two have been found sufficient to handle the demand.

Mr. Chaulk held no marine certificate of competency but all the pilots employed since 1953 have held at least a Mate's Home Trade Certificate. They are engaged on a seasonal basis and recruited in Newfoundland through public advertisements.

The pilots usually arrive at Goose Bay on different dates prior to the arrival of ships requiring their services in order to assist the Harbour Master position aids to navigation. Since they depart also on different dates after their services are no longer required, their periods of seasonal engagement vary.

In 1964, the pilots were accommodated at Goose Bay in the Department of Transport living area in a reserved room at a cost of \$25 per month plus the standard rate of \$50 for food. At Rigolet, lodging was free but they did their own cooking, drawing their food supplies from the mess hall at Goose Bay. They observed that they spent more time on station at Rigolet than at Goose Bay and asked to pay only proportionally at Goose Bay in accordance with the number of days spent there. This situation has been corrected since: the pilots now pay only \$10 per month for their room at the Goose Bay quarters and more favourable subsistence arrangements have been made.

Although the extreme limit of the navigation season is considered to be from the middle of June to the end of November, records (Ex. 1206) show that pilotage generally commences about the middle of June and continues to the end of October or the first week in November, i.e., about four and a half months. The busiest months are July and August. In 1964, for instance, pilotage trips were distributed as follows: June-4, July-31, August-20, September-14, October-16 and November-2, a total of 87 trips inward or outward during the season (Ex. 1205).

The distance of 92 miles from the pilot station to Terrington Basin takes from 7 to 8 hours' pilotage time. The number of assignments performed yearly is shown in the previous table of shipping statistics. In addition, they perform occasional movages within the harbour.

Two pilots are sufficient to meet the pilotage demand, especially since it has been decreasing, but this number is a minimum in view of the length of pilotage trips, the fluctuating requests for service and the possible absence of one of them due to illness, accident or other cause.

A pilot is generally made available without undue delay. As stated earlier, if a pilot is required at the other end of the District, he can be quickly transported by seaplane.

No shipping casualties have been reported in recent years.

4. PILOTS' REMUNERATION AND TARIFF

Since the pilots are on a fixed salary, there is no relationship between the tariff and their remuneration. The pilots' salaries are included in the operating expenses of the service.

The tariff appears to be reasonable and no complaints were registered by shipping. The tariff structure is realistic. No account is taken of distance run since there is only one port of destination and all trips are the same length (Part I, p. 159). The rates take the form of a ton-price unit with a minimum rate to avoid wasting the pilots' time on small vessels which do not need their services. It would be an improvement if gross tonnage were used instead of net tonnage (vide Part I, p. 180). It is also realistic that the voyage rate is all inclusive. It is unnecessary to fix a separate rate

for the pilot vessel since both services are provided by the same authority and the pilot vessel at Rigolet is used each trip, both inward and outward.

The pilots are seasonal employees of the Department of Transport. The period of their employment varies from year to year, depending upon the length of the navigation season, the pilotage demand, and any accessory duties they may be required to perform. For instance, in 1965 one pilot was employed for 129 days and the other 136 days. This explains the variation in their remuneration.

The pilots' salaries and conditions of employment are governed by the Prevailing Rates Regulations as implemented and amended by Orders of the Treasury Board (for details, vide pp. 673-674). At first, the pilots' salary was fixed on a daily basis; on April 1, 1962, the basis was changed to a monthly rate of \$660, and subsequent increases were approved August 1, 1963, to \$675; June 1, 1965, to \$695; and June 1, 1966, to \$710. In addition, the pilots receive the standard northern allowance of \$40 per month which has been in effect for many years.

This salary is net. They incur no expense in the performance of their duties and all their transportation costs between stations are borne by the Department of Transport. However, like other employees, they pay for their meals and living accommodation (vide p. 680).

The following table lists the gross income derived by each pilot from salary and northern allowance, but not including fringe benefits, i.e., pension, health and welfare privileges extended to Crown employees (Ex. 1206(a)).

Year	First Pilot	Second Pilot	Third Pilot
1961.....	\$ 3,172.34	\$ 2,802.69	\$ 3,669.75*
1962.....	4,214.14	3,720.00	3,512.66
1963.....	4,218.66	4,218.66	n/a
1964.....	4,246.17	4,246.17	"
1965.....	4,148.48	4,148.99	"
1966.....	4,127.42	4,185.59	"
1967.....	4,151.37	4,210.97	"

*The aggregate remuneration of the third pilot (Mr Chaulk) in 1961 does not compare with the others since, as a resident of the Goose Bay area maintaining a home, he was eligible for a \$26.66 monthly food allowance and a \$12.50 fuel and utilities allowance, both of which are included in the quoted figures.

5. FINANCIAL OPERATIONS

The gross revenue derived each year from pilotage operations is readily established since it is the aggregate amount of pilotage dues collected. The actual cost of the service, however, is difficult to establish because pilotage and its accessory services are not all segregated from port operations and those of other Branches of the Department of Transport.

A study of Goose Bay pilotage operations made by the Commission's accounting consultants (Part I, p. 632) indicates that up to 1965 there was a slight but decreasing surplus. The financial information on which this study was based was taken from the statements of revenue and expenses of the Marine Services, Nautical and Pilotage Division, Department of Transport (Ex. 1295) which segregate the expenses attributed to pilotage operations at Goose Bay. In a Pilotage District, these figures would normally give a complete picture but in this case they are incomplete and consequently misleading. For instance, it is observed that the cost of operating the pilot vessel service is not included but charged to the Aids to Navigation Branch as part of the operational cost of the District Marine Agent in St. John's. This factor changes the apparent slight surplus shown in the Commission's accounting consultants' study into a large deficit. In 1967, this item alone was estimated at \$22,000 (Ex. 1463(n)).

There are also other items which have been omitted for the same reason, e.g., providing, furnishing, maintaining and staffing the pilot station at Rigolet; hiring a local motor boat when the pilot vessel is not available; and the transportation of pilots by seaplane from Goose Bay to the pilot station or vice versa.

With these reservations, reference is made to the study in Part I, p. 632, for financial details of the Goose Bay pilotage operations. Pilotage earnings for the years 1966 and 1967 were \$11,634.14 and \$11,450.00, a substantial decline since the 1963 peak of \$17,169.00.

Chapter D

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE GOOSE BAY-LABRADOR AREA

RECOMMENDATION No. 1

The Pilotage Area of Goose Bay-Labrador to Be Made a Pilotage District, if and when a New Pilotage Act Is Enacted as Recommended in Part I

Under the existing statute, the Goose Bay-Labrador pilotage area can not be created a Pilotage District because, although there is a pilotage demand which must be met in the public interest, there are no local pilots available. Hence, the Government is obliged to organize and provide the pilotage service—a situation not contemplated by Part VI C.S.A. and for which it was not devised. However, if the proposed Pilotage Act is made fully comprehensive as recommended in General Recommendation No. 6 (Part I, p. 470), the difficulty will be overcome.

The pilotage service would benefit from the many advantages inherent in District organization, e.g., full control over the pilots and their qualifications would make it possible to guarantee the efficiency of the service. Moreover, Goose Bay is so remote from any existing Pilotage District that it must depend on a local Authority for direction.

Since the pilotage service is an essential function of port operations, it is considered that the Pilotage Authority should be the Port Authority, provided the conditions set out in the Commission's General Recommendation No. 18 are met (Part I, p. 510). If the Port Authority does not become a separate local corporation, the indicated solution is to appoint the Harbour Master *persona designata* as a one-man Pilotage Authority. Indeed, this would ensure the necessary pilotage autonomy and his position would keep him constantly *au fait* with pilotage matters. The limited pilotage operations would add little to his duties.

The pilots should then have the status of employees of their Authority (Part I, p. 497 and Part III, pp. 210 and ff.). This is necessary to avoid duplication of authority.

RECOMMENDATION No. 2

**Pilotage in the Proposed District to Be Classified
as a Public Service**

Pilotage in the Goose Bay-Labrador area was originally organized provided and directed by the Crown, because none existed previously and could not be provided otherwise. It remains in the public interest to ensure its continuance.

The remoteness of the area, the short navigational season, the relatively small pilotage demand and the expense involved make it unattractive for qualified mariners to engage in pilotage for this area and special inducements must be offered. Since there appear to be no local qualified candidates, they must be sought elsewhere and assured ample remuneration and satisfactory working conditions. Observing that the pilotage service and the port facilities exist mainly for Canadian Government enterprises, it is in the public interest to ensure the efficiency of the necessary supporting services, especially since the only alternative means of transportation is by air.

However, pilotage should not be classified as an essential public service but as a public service with the limited aim of placing an adequate service at the disposal of shipping. The few navigational hazards in the area are not such that up-to-date local knowledge and experience are necessary, and Masters who make several visits are justified in dispensing with the services of a pilot, as they now do.

The possibility of a serious shipping casualty in the restricted channels leading to Goose Bay and Terrington Basin is remote, and there appear to be no grounds for imposing compulsory pilotage in any form.

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